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8 IN THE UNITED STATES DISTRICT COURT
9
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11
12 TERRELL CROSS,

No. C 17-1049 WHA (PR)

13 Petitioner,

**ORDER OF DISMISSAL;
GRANTING LEAVE TO PROCEED
IN FORMA PAUPERIS**

14 v.

15 D. K. SISTO, Warden,

(Dkt. Nos. 2, 4)

16 Respondent.
17 _____/

18 Petitioner, a California prisoner, filed this pro se petition for a writ of habeas corpus
19 pursuant to 28 U.S.C. 2254 challenging his criminal judgment from Alameda County Superior
20 Court, convicting him of murder, assault, possession of f firearm, and sentence enhancements,
21 and sentencing him to a term of 54 years to life in state prison. He has challenged the legality
22 of the same conviction and sentence in a prior petition for a writ of habeas corpus filed in
23 federal court. *See Cross v. Sisto*, No. C. 07-3941 WHA (PR). That petition was denied on the
24 merits, and last year the United States Court of Appeals denied a certificate of appealability.
25 Petitioner does not dispute these facts, but rather claims in the instant petition that there is
26 newly discovered evidence demonstrating his innocence, that he should have an evidentiary
27 hearing on that evidence, that he received ineffective assistance of counsel, and that there was a
28 miscarriage of justice.

1 A petition for a writ of habeas corpus challenging the same state court judgment as a
2 prior federal petition denied on its merits may not be filed in the district court unless the
3 petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order
4 authorizing the district court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A). Petitioner
5 has not sought or obtained such an order from the Ninth Circuit. There are no exceptions to this
6 requirement for newly discovered evidence or a miscarriage of justice. Petitioner may bring
7 those arguments in his request to the Ninth Circuit for authorization to file this successive
8 habeas petition. The instant petition is **DISMISSED** without prejudice to refiling if petitioner
9 obtains the necessary order from the Ninth Circuit.


10 Leave to proceed in forma pauperis is **GRANTED** due to petitioner's lack of funds.

11 No certificate of appealability is warranted in this case because a reasonable jurist would
12 not find the dismissal of this petition debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484
13 (2000).

14 The clerk shall enter judgment and close the file.

15 **IT IS SO ORDERED.**

16
17 Dated: May 10, 2017.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE