

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ROBERTO ANTONIO MENDOZA,  
Petitioner,  
v.  
SCOTT FRAUNHEIM,  
Respondent.

Case No. [18-cv-00351-VC](#) (PR)

**ORDER OF DISMISSAL OF SECOND  
SUCCESSIVE PETITION; DENYING  
CERTIFICATE OF APPEALABILITY**

Roberto Antonio Mendoza, a state prisoner currently incarcerated at Corcoran State Prison, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. He has paid the \$5.00 filing fee.

Mendoza filed two previous petitions, which challenged the same state conviction he challenges in this petition, Contra Costa County criminal case number 1005404. The first petition was dismissed as untimely on January 15, 2016 and a certificate of appealability was denied. See *Mendoza v. Fraunheim*, Case No. 15-0849 VC, Dkt No. 22, Order Granting Motion to Dismiss. On July 25, 2016, the Ninth Circuit Court of Appeals denied Mendoza's request for a certificate of appealability. See Case No. 15-0849 VC, Dkt No. 29. The second petition was dismissed as a successive petition on January 13, 2017. See *Mendoza v. Borders*, Case No. 16-5654 VC, Dkt No. 7, Order of Dismissal. Therefore, Mendoza's present petition is a second successive petition. See *McNabb v. Yates*, 576 F.3d 1028, 1029 (9th Cir. 2009) (dismissal of habeas petition as barred by the statute of limitations constitutes a disposition on the merits and a further petition challenging same conviction is a second or successive petition).

A successive petition may not be filed in this court unless Mendoza first obtains from the

United States Court of Appeals for the Ninth Circuit an order authorizing this court to consider the petition. See 28 U.S.C. § 2244(b)(3)(A). Mendoza has not obtained such an order from the Ninth Circuit. Therefore, the petition is DISMISSED without prejudice to refile if Mendoza obtains the necessary order.

A certificate of appealability will not issue. See 28 U.S.C. § 2253(c). This is not a case in which “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The clerk shall close the file and enter judgment in accordance with this order.

**IT IS SO ORDERED.**

Dated: April 16, 2018

  
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VINCE CHHABRIA  
United States District Judge