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2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5

6 RAUL A. GARIBAY,

No. C 07-05338 CW (PR)

7 Petitioner,

ORDER OF DISMISSAL

8 v.

9 JOHN MARSHALL, Warden,

10 Respondent.
_____ /

11
12 Petitioner, a state prisoner, filed this pro se petition for
13 writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an
14 application for leave to proceed in forma pauperis (IFP).
15 Petitioner has filed a previous petition for a writ of habeas
16 corpus with this Court, challenging the same conviction and
17 sentence. See Case No. C 03-1808 CW (PR). The Court denied the
18 first petition on the merits.

19 DISCUSSION

20 The Court finds the present petition is a second or successive
21 petition attacking the same conviction and sentence as Petitioner's
22 prior federal habeas petition. A second or successive petition
23 containing new claims may not be filed in the district court unless
24 Petitioner first obtains from the United States Court of Appeals an
25 order authorizing the district court to consider the petition. 28
26 U.S.C. § 2244(b)(3)(A). Petitioner has not done so. Accordingly,
27 this petition is DISMISSED without prejudice to filing a new habeas
28 action if Petitioner obtains the necessary order.

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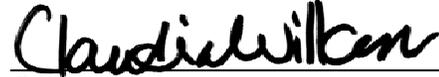
CONCLUSION

For the foregoing reasons, the petition is DISMISSED pursuant to 28 U.S.C. § 2244(b). Based solely on Petitioner's lack of financial resources, his application to proceed IFP (docket no. 2) is GRANTED.

The Clerk of the Court shall enter judgment in accordance with this Order, terminate all other pending motions, and close the file.

IT IS SO ORDERED.

Dated: 2/7/08



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 RAUL A. GARIBAY,
5 Plaintiff,

Case Number: CV07-05338 CW

CERTIFICATE OF SERVICE

6 v.

7 JOHN MARSHALL et al,
8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on February 7, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Raul A. Garibay
16 P98953
17 CMC - West, U1-D4-33U
18 P.O. Box 8103
19 San Luis Obispo, CA 93403

20 Dated: February 7, 2008

Richard W. Wiekling, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California