

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

4 ROBERT N. WASHINGTON,
5
6 Petitioner,

No. C 09-0978 SBA (PR)

**ORDER GRANTING MOTION TO
DISMISS PETITION AS SUCCESSIVE**

7 v.

8 JOHN W. HAVILAND, Acting Warden,
9
10 Respondent.

(Docket no. 8)

11
12 Petitioner Robert N. Washington filed this pro se habeas corpus action pursuant to 28 U.S.C.
13 § 2254.

14 Before the Court is Respondent's motion to dismiss, alleging that the petition should be
15 dismissed as a second or successive petition. Petitioner opposes the motion.

16 The record shows that Petitioner has filed a previous petition for a writ of habeas corpus with
17 this Court, challenging the same conviction and sentence. See Case No. C 02-2146 MJJ (PR). The
18 Court denied the first petition on the merits.

DISCUSSION

19 The Court finds the present petition is a second or successive petition attacking the same
20 conviction and sentence as Petitioner's prior federal habeas petition. A second or successive petition
21 containing new claims may not be filed in the district court unless Petitioner first obtains from the
22 United States Court of Appeals an order authorizing the district court to consider the petition. 28
23 U.S.C. § 2244(b)(3)(A). Petitioner has not done so. Accordingly, Respondent's motion to dismiss
24 the petition as a second or successive petition (docket no. 8) is GRANTED. The instant petition is
25 DISMISSED without prejudice to filing a new habeas action if Petitioner obtains the necessary
26 order.

CONCLUSION

27 For the foregoing reasons, Respondent's motion to dismiss the petition as a second or
28 successive petition (docket no. 8) is GRANTED, and the petition is DISMISSED pursuant to 28

1 U.S.C. § 2244(b). The Court has rendered its final decision on this matter; therefore, this Order
2 TERMINATES Petitioner's case.

3 The Clerk of the Court shall terminate all pending motions and close the file.

4 This Order terminates Docket no. 8.

5 IT IS SO ORDERED.

6 DATED: 5/17/10


SAUNDRA BROWN ARMSTRONG
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ROBERT N. WASHINGTON,
Plaintiff,

Case Number: CV09-04355 SBA

v.

CERTIFICATE OF SERVICE

CALIFORNIA STATE OF et al,
Defendant.

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

That on May 21, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Robert N. Washington P72776
La Palma Correctional Center - Arizona
L.P.C.C.
5501 N. LaPalma Road
Eloy, AZ 85131

Dated: May 21, 2010

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk