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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

GREGORY LEE GRAY,

Petitioner,

No. C 10-5748 PJH (PR)

vs.

ORDER OF DISMISSAL

M. McDONALD, Warden,

Respondent.

This is a habeas case brought pro se by a state prisoner. Petitioner has had a previous case attacking the same judgment, *Gray v. Runnels*, C 01-2880 PJH (PR). That case was dismissed as barred by the statute of limitations and the dismissal was affirmed on appeal.

A subsequent habeas petition directed to the same conviction, *Gray v. Felker*, 09-2461 PJH (PR), was dismissed by this court as second or successive. Petitioner did not appeal that dismissal.

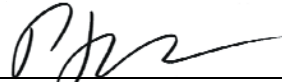
Petitioner then filed yet another petition attacking the same judgment, *Gray v. McDonald*, 10-0845 PJH (PR). As petitioner still had not obtained an order from the Ninth Circuit allowing him to file a second or successive petition, it also was dismissed. This court denied petitioner's motions for a certificate of appealability and for leave to proceed in forma pauperis on appeal, and in October of last year the court of appeals issued an order declining to grant a certificate of appealability, terminating the appeal.

A habeas petitioner may not file a second or successive petition unless he or she first obtains from the appropriate United States Court of Appeals an order authorizing the filing. See 28 U.S.C. § 2244(b)(3)(A). Petitioner has not obtained such an order from the

1 Ninth Circuit. The petition is accordingly **DISMISSED** without prejudice to filing a new
2 petition if petitioner obtains the necessary order. The clerk shall close the file.

3 **IT IS SO ORDERED.**

4 Dated: January 10, 2011.



PHYLLIS J. HAMILTON
United States District Judge

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