

1 § 2254, because the present petition is a second or successive
2 petition attacking the same 1992 conviction and sentence as
3 Petitioner's prior federal habeas petition. A second or successive
4 petition containing previously raised or new claims may not be
5 filed in the district court unless the petitioner first obtains
6 from the United States Court of Appeals an order authorizing the
7 district court to consider the petition. 28 U.S.C.
8 § 2244(b)(3)(A). Petitioner here has not done so.

9 Accordingly, the instant petition is DISMISSED without
10 prejudice to Petitioner's refiling the petition if he obtains the
11 necessary order.

12 In light of Petitioner's lack of funds, the application to
13 proceed in forma pauperis is GRANTED.

14 CONCLUSION

15 For the reasons stated above, the petition is DISMISSED,
16 pursuant to 28 U.S.C. § 2244(b) and without prejudice, as a second
17 or successive petition.

18 The application to proceed in forma pauperis is GRANTED.

19 The Clerk of the Court shall enter judgment and close the
20 file.

21 This Order terminates Docket nos. 6 and 8.

22 IT IS SO ORDERED.

23 Dated: 10/7/2011



24 CLAUDIA WILKEN
25 UNITED STATES DISTRICT JUDGE
26
27
28

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

4 KUN SHAN PENG,
5 Plaintiff,

Case Number: CV11-01685 CW

CERTIFICATE OF SERVICE

6 v.

7 JAMES TILTON 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 October 7, 2011, 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 Kun S. Peng H52106
16 Bldg. #15 J4 Upper
17 Solano-CSP
2100 Peabody Road
P.O. Box 4000
Vacaville, CA 95696-4000

18 Dated: October 7, 2011

19 Richard W. Wieking, Clerk
20 By: Nikki Riley, Deputy Clerk

United States District Court
For the Northern District of California