

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

3 MARVIN HARRIS,

No. C 11-04304 SBA (PR)

4 Petitioner,

ORDER OF DISMISSAL

5 v.

6 T. VIRGA, Warden,

7 Respondent.

8
9 Petitioner, a state prisoner, filed this pro se petition for writ of habeas corpus pursuant to 28
10 U.S.C. § 2254. His application for leave to proceed in forma pauperis has been granted.

11 Petitioner has filed a previous petition for a writ of habeas corpus with this Court,
12 challenging the same conviction and sentence. See Case Nos. C 92-2180 JPV and C 92-2181 JPV
13 (consolidated cases). His first petition was considered on the merits and dismissed with prejudice in
14 1992.

15 **DISCUSSION**

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

22 **CONCLUSION**

23 For the foregoing reasons, the petition is DISMISSED pursuant to 28 U.S.C. § 2244(b). The
24 Clerk of the Court shall enter judgment in accordance with this Order, terminate all other pending
25 motions (docket nos. 10, 11), and close the file. This Order terminates Docket nos. 10 and 11.

26 IT IS SO ORDERED.

27 DATED: 2/9/12

28 
SAUNDRA BROWN ARMSTRONG
UNITED STATES DISTRICT JUDGE

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

4 MARVIN HARRIS,

5 Plaintiff,

6 v.

7 T. VIRGA et al,

8 Defendant.

Case Number: CV11-04304 SBA

CERTIFICATE OF SERVICE

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 10, 2012, 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
14 located in the Clerk's office.

15 Marvin Harris #D-99649
16 New Folsom State Prison
17 P.O. Box 29006
18 Represa, CA 95671

19 Dated: February 10, 2012

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