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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

RICHARD A. ROUNDTREE,

Petitioner,

No. C 12-4577 PJH (PR)

vs.

ORDER OF DISMISSAL

RICK HILL, Warden,

Respondent.

This is a habeas case brought pro se by a state prisoner. Petitioner had a previous case, it appeared attacking the same judgment, *Roundtree v. Lewis*, C 03-3151 PJH (PR). The petition in that case was denied in an order entered on October 6, 2006. The Ninth Circuit denied a request for a certificate of appealability on April 17, 2007. Petitioner was ordered to show cause why this petition should not be dismissed as second or successive. Petitioner has filed a response.

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 Ninth Circuit. In his response to the order to show cause, petitioner does not address that this is a successive petition, rather stating that the court should review the case in the interest of justice. The court is unable to review the petition without an order from the Ninth Circuit.

The petition is accordingly **DISMISSED** without prejudice to filing a new petition if petitioner obtains the necessary order. Because reasonable jurists would not find the court's conclusion that this petition is second or successive debatable or wrong, a COA is

1 **DENIED.** See *Slack v. McDaniel*, 529 U.S. 473, 483 (2000) (standard). The clerk shall
2 close the file.

3 **IT IS SO ORDERED.**

4 Dated: January 2, 2013.



PHYLLIS J. HAMILTON
United States District Judge

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