

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

GEORGE RED, JR.,

No. C 13-00641 YGR (PR)

Petitioner,

**ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS; AND DENYING
CERTIFICATE OF APPEALABILITY**

v.

KEVIN CHAPPELL, Warden,

Respondent.

Petitioner, a state prisoner, filed this *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an application for leave to proceed *in forma pauperis* (IFP). Petitioner has filed a previous petition for a writ of habeas corpus with this Court, challenging the same conviction and sentence. *See* Case No. C 04-4408 JW (PR). The Court denied the first petition on the merits.

Respondent has moved to dismiss the petition as successive under 28 U.S.C. § 2244(b). (Docket No. 8.)

For the reasons discussed below, the Court grants Respondent's motion to dismiss.

DISCUSSION

The Court finds the present petition is a second or successive petition attacking the same conviction and sentence as Petitioner's prior federal habeas petition. A second or successive petition containing new claims may not be filed in the district court unless Petitioner first obtains from the United States Court of Appeals an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Petitioner has not done so. Consequently, the instant petition must be classified as a successive petition. Petitioner has not presented an order from the Ninth Circuit authorizing this Court to consider any new claims. *See id.* Accordingly, Respondent's motion to dismiss (Docket No. 8) is GRANTED, and this petition is DISMISSED without prejudice to filing a new habeas action if Petitioner obtains the necessary order.

CONCLUSION

For the foregoing reasons, Respondent's motion to dismiss the petition as successive (Docket No. 8) is GRANTED. The instant petition is DISMISSED as a successive petition pursuant to § 2244(b).


1 No certificate of appealability is warranted in this case. *See* Rule 11(a) of the Rules
2 Governing § 2254 Cases, 28 U.S.C. foll. § 2254 (requiring district court to rule on certificate of
3 appealability in same order that denies petition). Petitioner has not shown "that jurists of reason
4 would find it debatable whether the petition states a valid claim of the denial of a constitutional right
5 and that jurists of reason would find it debatable whether the district court was correct in its
6 procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

7 The Clerk of the Court shall enter judgment in accordance with this Order, terminate all
8 other pending motions, and close the file.

9 This Order terminates Docket No. 8.

10 IT IS SO ORDERED.

11 DATED: August 16, 2013


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE