

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAJOSEPH BELL,
Plaintiff,
v.
ERIC ARNOLD,
Defendant.Case No. [16-cv-03034-PJH](#)**ORDER FOR PETITIONER TO SHOW
CAUSE**

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee. Petitioner challenges a November 8, 1996, conviction from the San Francisco County Superior Court. Petitioner argues that he received an unauthorized sentence in excess of the trial court's jurisdiction because of state Propositions that were passed in 1990 before his trial and sentence. However, court records indicate that petitioner already filed a habeas petition in this court challenging the same conviction. *See Bell v. Lamarque*, Case No. 99-cv-3562-PJH. That case was denied on June 20, 2003, and an appeal was later denied. This appears to be a successive petition.

"A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed . . ." 28 U.S.C. § 2244(b)(2). This is the case unless,

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

1 (ii) the facts underlying the claim, if proven and viewed
2 in light of the evidence as a whole, would be sufficient to
3 establish by clear and convincing evidence that, but for
4 constitutional error, no reasonable factfinder would have
5 found the applicant guilty of the underlying offense.

6 28 U.S.C. § 2244(b)(2).

7 “Before a second or successive application permitted by this section is filed
8 in the district court, the applicant shall move in the appropriate court of appeals for an
9 order authorizing the district court to consider the application.” 28 U.S.C. §
10 2244(b)(3)(A). It does not appear that petitioner has received authorization from the
11 Ninth Circuit to file this petition, therefore he will be ordered to show cause why this case
12 should not be dismissed. Petitioner must show cause by **July 29, 2016**, why this case
13 should not be dismissed as successive. Failure to file a response will result in dismissal.

14 **IT IS SO ORDERED.**

15 Dated: June 28, 2016



16 _____
17 PHYLLIS J. HAMILTON
18 United States District Judge

19 \\candoak.cand.circ9.dcn\data\users\PJHALL_psp\2016\2016_03034_Bell_v_Arnold_(PSP)\16-cv-03034-PJH-osc-p.docx
20
21
22
23
24
25
26
27
28

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 JOSEPH BELL,
4 Plaintiff,

5 v.

6 ERIC ARNOLD,
7 Defendant.

Case No. [16-cv-03034-PJH](#)

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk,
10 U.S. District Court, Northern District of California.

11 That on June 28, 2016, I SERVED a true and correct copy(ies) of the attached, by
12 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter
13 listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an
14 inter-office delivery receptacle located in the Clerk's office.

15
16 Joseph Bell
17 K-30059
18 P.O. Box 4000
19 Vacaville, CA 95696

20 Dated: June 28, 2016

21
22 Susan Y. Soong
23 Clerk, United States District Court

24 By: 
25 Nichole Peric, Deputy Clerk to the
26 Honorable PHYLLIS J. HAMILTON
27
28