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

GEORGE M. PASION,) No. C 00-20249 JF (PR)
Petitioner,) ORDER ADDRESSING PENDING) MOTION
VS.))
R.Q. HICKMAN and BILL LOCKYER,)))
Respondents.)) _) (Docket No. 70)

Petitioner, a California prisoner, filed a <u>pro se</u> petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state conviction. The petition was denied on the merits on March 28, 2003. After judgment had been entered, Petitioner filed an application for leave to file supplemental writ, which the court construed as a "motion for reconsideration of the perceived dismissal of his claim that his sentence violated the Eighth Amendment." (Docket No. 59.) In its order filed March 29, 2004, the Court clarified that the Eighth Amendment claim was never dismissed and that the claim had been "fully briefed by the parties." (<u>Id.</u>) Accordingly, petitioner's Eighth Amendment claim was considered on the merits in the Court order denying the petition.

On August 17, 2009, petitioner filed a request for "prompt" disposition of the

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Court order issued in March 2004. (Docket No. 70.) However, there are further rulings to be made by this Court as the matter has been fully adjudicated on the merits, including petitioner's Eighth Amendment claim. Petitioner is not entitled to federal habeas relief.

Petitioner also seeks relief based on a Ninth Circuit decision issued in 2008. (See Docket No. 70 at 2.) Liberally construed, petitioner appears to be seeking to file a second or successive habeas petition. However, a district court must dismiss claims presented in a second or successive habeas petition challenging the same conviction and sentence unless the claims presented in the previous petition were denied for failure to exhaust. See 28 U.S.C. § 2244(b)(1); Babbitt v. Woodford, 177 F.3d 744, 745-46 (9th Cir. 1999). Additionally, a district court must dismiss any new claims raised in a successive petition unless the petitioner received an order from the court of appeals authorizing the district court to consider the petition. See 28 U.S.C. § 2244(b)(2). Petitioner's claim challenges the same sentence as the previous petition and Petitioner has not presented an order from the Ninth Circuit Court of Appeals authorizing this Court to consider any new claims. Petitioner's first petition was adjudicated on the merits in this Court's order denying the petition on March 28, 2003. Accordingly, this Court cannot address the merits of this claim without the Ninth Circuit's authorization.

This order terminates Docket No. 70.

IT IS SO ORDERED.

DATED:

United States District Judge

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

GEORGE M. PASION,	Case Number: CV00-20249 JF
Petitioner,	CERTIFICATE OF SERVICE
v.	
R.Q. HICKMAN and BILL LOCKYER,	
Respondents.	
I, the undersigned, hereby certify that I am an Court, Northern District of California.	n employee in the Office of the Clerk, U.S. District
attached, by placing said copy(ies) in a posta	e in the U.S. Mail, or by placing said copy(ies) into
George M. Pasion E-16624 California State Prison-Solano P.O. Box 4000 Vacaville, CA 95698-4000	
Dated:9/9/09	Dishard W. Wisking Clark
	Richard W. Wieking, Clerk