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E-Filed 9/19/2013

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ANDREW PIAZZA,
Petitioner,
v.
GEORGE A. ORTIZ, Warden,
Respondent.

Case No. C 01-20326 JF (PR)
ORDER DENYING MOTION FOR APPEAL
[re: Docket No. 75]

On August 6, 2012, Petitioner, a California prisoner proceeding *pro se*, filed a motion to reopen and amend his petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, which the Court denied on August 17, 2012. (See Docket No. 74).

Petitioner has filed a “motion for appeal of the Court’s order denying motion to reopen and amend habeas corpus petition.” (Docket No. 75). Petitioner’s argument that his petition should “relate back” does not change the fact that he is challenging the same conviction based on new claims, which requires that he must first obtain an order from the United States Court of Appeals for the Ninth Circuit authorizing this Court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Petitioner has not shown that he has obtained such authorization.

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Accordingly, the motion to appeal is DENIED. Petitioner may file a second or successive petition challenging the same conviction if and when he obtains the necessary order from the Ninth Circuit.

This order terminates Docket No. 75.

IT IS SO ORDERED.

DATED: September 19, 2013



JEREMY FOGEL
United States District Judge