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E-FILED - 9/11/08

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

DWAYNE E. DAVIS,)	No. C 07-1578 RMW (PR)
)	
Petitioner,)	ORDER DENYING MOTION
)	FOR RELIEF FROM
vs.)	JUDGMENT
)	
MIKE C. KRAMER, Warden)	
)	(Docket No. 7)
Respondent.)	


Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was dismissed as a second or successive petition pursuant to 28 U.S.C. § 2244(b), without prejudice to refile after petitioner obtains the necessary authorization from the Ninth Circuit. Petitioner has filed a motion for relief from judgment (Docket No. 7). Petitioner’s motion addresses the merits of his petition and does not discuss the requirement that he get authorization for a second or successive application. Although a prisoner may have grounds under § 2244 (2)(b) for a second or successive application, § 2244(3)(A) requires that the applicant must "move in the *appropriate court of appeals* for an order authorizing the district court to consider the application." (emphasis added). Since petitioner has not obtained the required

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1 authorization, his motion for relief from judgment is DENIED without prejudice.

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Dated: 9/10/08



RONALD M. WHYTE
United States District Judge