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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).

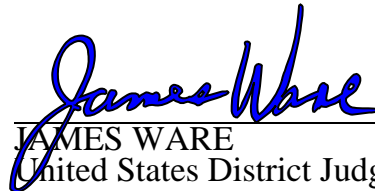
Additionally, a district court must dismiss any new claims raised in a successive petition unless the petitioner received an order from the court of appeals authorizing the district court to consider the petition. See 28 U.S.C. § 2244(b)(2).

Here, the instant petition 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 admits that his first federal petition was adjudicated on the merits. Accordingly, this Court must dismiss the instant petition in its entirety. The instant petition is DISMISSED as a second or successive petition pursuant to § 2244 (b)(1).

Petitioner's motion for leave to proceed in forma pauperis (Docket No. 5) is GRANTED.

This order terminates Docket Nos. 3, 4 and 5.

DATED: January 5, 2010



JAMES WARE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DEMETRIUS BORSTAD,
Petitioners,

Case Number: CV09-03756 JW

CERTIFICATE OF SERVICE

v.

J. HARTLEY, Warden,
Respondent.

_____/

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

That on 1/15/2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Demetrius Borstad D-73472
Avenal State Prison
P. O. Box 900
Avenal, CA 93204

Dated: 1/15/2010

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk