



1 same conviction and sentence unless the claims presented in the previous petition  
2 were denied for failure to exhaust. See 28 U.S.C. § 2244(b)(1); Babbitt v.  
3 Woodford, 177 F.3d 744, 745-46 (9th Cir. 1999). Additionally, a district court must  
4 dismiss any new claims raised in a successive petition unless the petitioner received  
5 an order from the court of appeals authorizing the district court to consider the  
6 petition. See 28 U.S.C. § 2244(b)(2).

7 Here, the instant petition challenges the same sentence as the previous  
8 petition and Petitioner has not presented an order from the Ninth Circuit Court of  
9 Appeals authorizing this Court to consider any new claims. Petitioner's first petition  
10 was adjudicated on the merits in this Court's order denying the petition in August  
11 1996. Accordingly, this Court must dismiss the instant petition in its entirety.

12 Respondent's motion to dismiss, (Docket No. 6), is GRANTED. The instant  
13 petition is DISMISSED as a second and successive petition pursuant to § 2244  
14 (b)(1). Petitioner's motion to withdraw the petition, (Docket No. 7), is DENIED as  
15 moot.

16 This order terminates Docket Nos. 6 and 7.

17 IT IS SO ORDERED.

18  
19 DATED: 5/17/10

  
20 JEREMY FOGEL  
United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

HERBERT ALEXANDER,  
Petitioner,

Case Number: CV09-04773 JF

**CERTIFICATE OF SERVICE**

v.

JOHN W. HAVILAND, Warden,  
Respondent.

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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 5/21/10, 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.

Herbert Alexander E-50502  
California State Prison-Solano  
P.O. Box 4000  
Vacaville, CA 95696

Dated: 5/21/10

Richard W. Wieking, Clerk