

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BRIAN YOUNG,  
Petitioner,  
  
v.  
  
SUPERIOR COURT COUNTY OF  
ALAMEDA,  
  
Respondent.

Case No. 16-06616 EJD (PR)

**ORDER OF DISMISSAL;  
GRANTING MOTION FOR LEAVE  
TO PROCEED *IN FORMA*  
*PAUPERIS***

(Docket No. 5)

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state conviction. Petitioner has filed a motion for leave to proceed in forma pauperis. (Docket No. 5.)

**DISCUSSION**

A second or successive petition containing previously raised or new claims may not be field in the district court unless the petitioner first obtains from the United States Court of Appeals an order authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A).

It appears that the instant habeas petition is second or successive because Petitioner

1 filed a prior habeas petition in this Court, see Young v. Barnes, Case No. 14-03550 EJD  
2 (PR), which challenged the same state conviction out of Alameda County in 2012. In that  
3 case, the Court denied the petition on the merits of three claims.<sup>1</sup> Petitioner now raises a  
4 new claim which he has recently exhausted in the state courts. However, before a second  
5 or successive petition may be filed in the district court, Petitioner must first obtain an order  
6 from the Ninth Circuit Court of Appeals authorizing this Court to consider a renewed  
7 challenge to his state conviction. See 28 U.S.C. § 2244(b)(3)(A). Accordingly, the instant  
8 petition must be dismissed in its entirety as second and successive.

9 Petitioner has not presented such an order from the Ninth Circuit. See 28 U.S.C. §  
10 2244(b)(3)(A). Accordingly, the instant petition must be dismissed in its entirety as  
11 second and successive.

### 12 CONCLUSION

13 For the foregoing reasons, the instant petition for a writ of habeas corpus is  
14 DISMISSED without prejudice as second and successive. Petitioner may file another  
15 petition in this Court **if he obtains the necessary order from the Ninth Circuit.**

16 No certificate of appealability is warranted in this case. See Rule 11(a) of the Rules  
17 Governing § 2254 Cases, 28 U.S.C. foll. § 2254 (requiring district court to rule on  
18 certificate of appealability in same order that denies petition). Petitioner has not shown  
19 “that jurists of reason would find it debatable whether the petition states a valid claim of  
20 the denial of a constitutional right and that jurists of reason would find it debatable  
21 whether the district court was correct in its procedural ruling.” Slack v. McDaniel, 529  
22 U.S. 473, 484 (2000).

23 Petitioner’s motion for leave to proceed in forma pauperis, (Docket No. 5), is  
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26 <sup>1</sup> Petitioner appealed the matter, and the Ninth Circuit denied his request for a certificate of  
27 appealability on August 26, 2016. See Young v. Barnes, No. 16-15082, slip op. at 1 (9th  
28 Cir. Aug. 26, 2016).

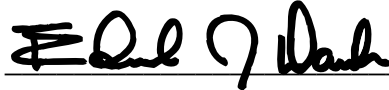
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GRANTED.

This order terminates Docket No. 5.

**IT IS SO ORDERED.**

**Dated:** 1/17/2017



EDWARD J. DAVILA  
United States District Judge