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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KEITH R. BRIDGEWATER,

Petitioner,

vs.

A.K. SCRIBEN, Warden,

Respondent.

Civil No. 07-1340 JAH (WMc)

**ORDER DISMISSING HABEAS
PETITION WITHOUT PREJUDICE
AS SECOND OR SUCCESSIVE**

On July 23, 2007, Petitioner, a state prisoner proceeding pro se, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. In this action Petitioner is challenging his October 28, 1996 Imperial County Superior Court conviction and sentence in Case No. CF-227. (*See* Pet. at 1.)

PRIOR FEDERAL HABEAS PETITIONS DENIED ON THE MERITS

On February 11, 2000, Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 was transferred to this Court from the Central District and given case no. 00cv0308 BTM (JAH). (*See* Petition in SO. DIST. CA. CIVIL CASE NO. 00cv0308 BTM (JAH).) In that petition, Petitioner also challenged his conviction and sentence in Imperial County Superior Court case No. CF-227. (*See id.* at 16.) On March 21, 2001, this Court dismissed the petition because it had been filed well after the expiration of the one-year statute of limitations.

1 (See Order filed 3/21/01 in SO. DIST. CA. CIVIL CASE NO. 00cv0308 BTM (JAH).) Petitioner
2 has not appealed that determination.

3 **INSTANT PETITION BARRED BY GATEKEEPER PROVISION**

4 Petitioner is now seeking to challenge the same conviction he challenged in his prior
5 federal habeas petition. Unless a petitioner shows he or she has obtained an order from the
6 appropriate court of appeals authorizing the district court to consider a successive petition, the
7 petition may not be filed in the district court. See 28 U.S.C. § 2244(b); *Murray v. Greiner*, 394
8 F.3d 78 (2d Cir. 2005) (holding that dismissal for failure to comply with one-year statute of
9 limitations renders subsequent petitions challenging the same conviction or sentence “second
10 or successive” under 2244(b)); *Reyes v. Vaughn*, 276 F.Supp.2d 1027, 1029 (C. D. Cal. 2003)
11 (same). Here, there is no indication the Ninth Circuit Court of Appeals has granted Petitioner
12 leave to file a successive petition.

13 **CONCLUSION**

14 Because there is no indication Petitioner has obtained permission from the Ninth Circuit
15 Court of Appeals to file a successive petition, this Court cannot consider his Petition.
16 Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing a petition
17 in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals. **THE**
18 **CLERK OF COURT IS DIRECTED TO MAIL PETITIONER A BLANK**
19 **APPLICATION TO FOR LEAVE TO FILE SECOND OR SUCCESSIVE PETITION**
20 **UNDER 28 U.S.C. § 2254.**

21 The Clerk shall close the file.

22 **IT IS SO ORDERED.**

23 DATED: August 2, 2007

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25 HON. JOHN A. HOUSTON
26 United States District Judge

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