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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALFREDO PURATA,

Petitioner,

v.

JAMES YATES, Warden,

Respondent.

Civil No. 09cv0171-L (PCL)

**SUMMARY DISMISSAL OF SECOND
OR SUCCESSIVE PETITION PUR-
SUANT TO 28 U.S.C. § 2244(b)(3)(A)
GATEKEEPER PROVISION**

Petitioner Alfredo Purata, a state prisoner proceeding pro se, has submitted a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis. The Court does not rule on Petitioner's application to proceed in forma pauperis because this case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

PRIOR FEDERAL HABEAS PETITIONS FILED BY PETITIONER

The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner has submitted to this Court challenging his August 10, 1994 conviction in San Diego Superior Court Case No. SCD103277.

On May 14, 2008, Petitioner filed in this Court a Petition for a Writ of Habeas Corpus in SOUTHERN DISTRICT CA. CIVIL CASE NO. 08cv0869-IEG (WMc). In that petition, Petitioner challenged his August 10, 1994 conviction in San Diego Superior Court case No. SCD103277. On August 26, 2008, this Court dismissed the petition on the basis that it was second or

1 successive to a petition which had been denied on the merits in SOUTHERN DISTRICT CA. CIVIL
2 CASE NO. 02cv1478-BTM (JAH). (See Order filed Aug. 26, 2008 [Doc. No. 10] in SOUTHERN
3 DISTRICT CA. CIVIL CASE NO. 08cv0869-IEG (WMc).) The dismissal was without prejudice to
4 Petitioner to request permission from the Ninth Circuit Court of Appeals to proceed with a
5 second or successive petition. (Id.)

6 **INSTANT PETITION BARRED BY GATEKEEPER PROVISION**

7 Petitioner is now seeking to challenge the same conviction and sentence he challenged
8 in his prior federal habeas petitions. Unless a petitioner shows he or she has obtained an order
9 from the appropriate court of appeals authorizing the district court to consider a second or
10 successive petition, the petition may not be filed in the district court. See 28 U.S.C.
11 § 2244(b)(3)(A). Here, Petitioner submits an Order from the Ninth Circuit Court of Appeals
12 filed on December 1, 2008, denying him permission to file a second or successive petition in the
13 district court. (Pet. Ex. B.) Although Petitioner contends the claim presented in the instant
14 Petition is “different in scope” than the claims raised in his previous petition, they appear to be
15 identical. (Compare Petition at 6 with Petition filed on May 14, 2008 in SOUTHERN DISTRICT
16 CA. CIVIL CASE NO. 08cv0869-IEG (WMc).) In any case, the issue presented, that Petitioner’s
17 federal Constitutional rights were violated by the imposition of consecutive rather than
18 concurrent sentences, is foreclosed by the recent decision of the United States Supreme Court
19 in Oregon v. Ice, 555 U.S. ___, No. 07-901 (Jan. 14, 2009).

20 **CONCLUSION**

21 Because Petitioner has failed to obtain permission from the Ninth Circuit Court of
22 Appeals to file a second or successive petition, this Court cannot consider his Petition. Accord-
23 ingly, the Court **DISMISSES** this action without prejudice to Petitioner’s filing a petition in this
24 court if he obtains the necessary order from the Ninth Circuit Court of Appeals.

25 **IT IS SO ORDERED.**

26 DATED: February 9, 2009

27 
28 M. James Lorenz
United States District Court Judge

CC: ALL PARTIES