



1 information provided in the First Amended Petition, the Court finds this case must be summarily  
2 dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

3 **PETITION BARRED BY GATEKEEPER PROVISION**

4 The instant First Amended Petition is not the first Petition for a Writ of Habeas Corpus  
5 Petitioner has submitted to this Court challenging his 1998 conviction in San Diego Superior  
6 Court case No. SRF122463. On April 14, 2008, Petitioner filed in this Court a Petition for Writ  
7 of Habeas Corpus in case No. 08cv0698. In that petition, Petitioner challenged his conviction  
8 in San Diego Superior Court case No. SRF122463 as well. On January 22, 2009, this Court  
9 denied the petition on the merits, determining that Petitioner was no longer “in custody” for the  
10 1998 conviction which was the subject of his petition. (*See* Order filed Jan. 22, 2009 in case  
11 No. 08cv0698 BEN (PCL) [Doc. No. 35].) Petitioner did not appeal that determination.

12 Petitioner is now seeking to challenge the same conviction he challenged in his prior  
13 federal habeas petition. Unless a petitioner shows he or she has obtained an Order from the  
14 appropriate court of appeals authorizing the district court to consider a successive petition, the  
15 petition may not be filed in the district court. *See* 28 U.S.C. § 2244(b)(3)(A). Here, there is no  
16 indication the Ninth Circuit Court of Appeals has granted Petitioner leave to file a successive  
17 petition.

18 **CONCLUSION**

19 Because there is no indication Petitioner has obtained permission from the Ninth Circuit  
20 Court of Appeals to file a successive petition, this Court cannot consider his First Amended  
21 Petition. Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing  
22 a petition in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals.  
23 For Petitioner’s convenience, the Clerk of Court shall attach a blank Ninth Circuit Application  
24 for Leave to File Second or Successive Petition.

25 **IT IS SO ORDERED.**

26 **DATED: September 14, 2010**

27 

28 HON. DANA M. SABRAW  
United States District Judge