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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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

10  
11 ROBERT MCBRIDE,

Petitioner,

12  
13 vs.

14 CYNTHIA TAMPKINS, Warden,

15 Respondents.

Civil No. 14-1222 BEN (BLM)

**SUMMARY DISMISSAL OF  
SUCCESSIVE PETITION  
PURSUANT TO 28 U.S.C.  
§ 2244(b)(3)(A) GATEKEEPER  
PROVISION**

16  
17 Petitioner has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C.  
18 § 2254, along with a request to proceed in forma pauperis. The Court does not rule on  
19 Petitioner's request to proceed in forma pauperis because this case is summarily  
20 dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

21 **PETITION BARRED BY GATEKEEPER PROVISION**

22 The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner  
23 has submitted to this Court challenging his conviction in San Diego Superior Court case  
24 No. SCD212872. On June 16, 2011, Petitioner filed in this Court a Petition for Writ of  
25 Habeas Corpus in case No. 11cv1351. In that petition, Petitioner challenged his August  
26 6, 2008 conviction as well. On July 19, 2012, this Court denied the petition on the  
27 merits. (See Order filed July 19, 2012 in case No. 11cv1351 AJB (PCL) [ECF No. 16].)  
28 Petitioner appealed that determination. On July 26, 2013, the Ninth Circuit Court of

1 Appeals denied Petitioner's request for certificate of appealability. (*See Order in*  
2 *McBride v. Yates*, No.12-56571 (9th Cir. July 26, 2013).)

3 Petitioner is now seeking to challenge the sentence imposed as a result the  
4 conviction he challenged in his prior federal habeas petition. Unless a petitioner shows  
5 he or she has obtained an order from the appropriate court of appeals authorizing the  
6 district court to consider a successive petition, the petition may not be filed in the district  
7 court. *See* 28 U.S.C. § 2244(b)(3)(A); *see also* *Burton v. Stewart*, 549 U.S. 147, 153  
8 (2007) (a petition is successive where it challenges "the same custody imposed by the  
9 same judgment of a state court" as a prior petition). A successive application is  
10 permissible "only if it rests on a new rule of constitutional law, facts that were previously  
11 unavailable, or facts that would be sufficient to show constitutional error in the  
12 petitioner's conviction." 28 U.S.C. § 2244(b)(2). "Even if a petitioner can demonstrate  
13 that he qualifies for one of these exceptions, he must seek authorization from the court  
14 of appeals before filing his new petition with the district court." *Woods v. Carey*, 525  
15 F.3d 886, 888 (9th Cir. 2008). Here, there is no indication that the Ninth Circuit Court  
16 of Appeals has granted Petitioner leave to file a successive petition.

17 **CONCLUSION**

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

24 **IT IS SO ORDERED.**

25  
26 DATED: 5/27/14

27   
28 HON. ROGER T. BENITEZ  
United States District Judge