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8	UNITED STATES DISTRICT COURT	
9	SOUTHERN DISTRICT OF CALIFORNIA	
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11	KEITH COSBY,	Case No.: 16-0639 GPC (MDD)
12	Petitioner,	SUMMARY DISMISSAL OF
13	V.	SUCCESSIVE PETITION PURSUANT TO 28 U.S.C.
14	FELIZ VASQUEZ, Warden,	§ 2244(b)(3)(A) GATEKEEPER
15	Respondent.	PROVISION
16		
17	Petitioner, Keith Cosby, a state prisoner proceeding pro se, has filed a Petition for	
18	Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. He has not paid the \$5.00 fee and	
19	has not moved to proceed in forma pauperis. The Court does not rule on Petitioner's in	
20	forma pauperis status because this case is summarily dismissed pursuant to 28 U.S.C.	
21	§ 2244(b)(3)(A) as indicated below.	
22	PETITION BARRED BY GATEKEEPER PROVISION	
23	The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner	
24	has submitted to this Court challenging his October 26, 1988 conviction in San Diego	
25	Superior Court case No. CR-84617. On October 12, 1993, Petitioner filed in this Court a	
26	Petition for Writ of Habeas Corpus in case No. 93cv1554 R (LSP). In that petition,	
27	Petitioner challenged his conviction in San Diego Superior Court case No. CR-84617 as	

well. On January 4, 1996, this Court denied the petition on the merits. (See Order filed

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January 4, 1996 in case No. 93cv1554 R (LSP) [Doc. No. 18].) Petitioner did not appeal that determination.

On February 11, 2004, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in case No. 04cv0292 W (JMA). In that petition, Petitioner again challenged his conviction in San Diego Superior Court case No. CR-84617. On February 23, 2004, this Court dismissed the petition as successive pursuant to 28 U.S.C. § 2244(b)(3)(A). (*See* Order filed February 23, 2004 in case No. 04cv0292 W (JMA) [Doc. No. 2].) Petitioner did not appeal that determination.

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

## **CONCLUSION**

Because there is no indication Petitioner has obtained permission from the Ninth Circuit Court of Appeals to file a successive petition, this Court cannot consider his Petition. Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing a petition in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals. *The Clerk of Court is directed to mail Petitioner a blank Application to File a Second or Successive Petition or Motion Under 28 U.S.C. § 2254 together with a copy of this Order.* 

IT IS SO ORDERED.

Dated: March 23, 2016

Hon. Gonzalo P. Curiel
United States District Judge