

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 DAVID L. DEW,

11  
12 Petitioner,

13 v.

14 SHAWN HATTON, Warden, et al.,

15 Respondents.  
16

Case No.: 16cv1985-MMA (MDD)

**ORDER DISMISSING PETITION  
FOR WRIT OF HABEAS CORPUS  
FOR LACK OF JURISDICTION**

17 On August 5, 2016, Petitioner David L. Dew (“Petitioner”), a state prisoner, filed a  
18 petition for writ of habeas corpus (“petition”) pursuant to Title 28 of the United States  
19 Code, Section 2254. *See* Doc. No. 1. On July 24, 2017, the Court issued an order  
20 adopting the Recommendation of the magistrate judge that the petition be dismissed, and  
21 dismissed the petition with prejudice. *See* Doc. No. 13. The Clerk of Court entered  
22 judgment the same day. *See* Doc. No. 14. Petitioner appealed. *See* Doc. No. 15.

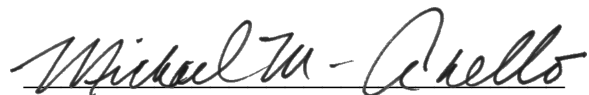
23 On November 30, 2018, the United States Court of Appeals for the Ninth Circuit  
24 issued an order vacating the judgment, and remanding with instructions to dismiss the  
25 petition for lack of jurisdiction. *See* Doc. No. 19. The Ninth Circuit noted that Petitioner  
26 previously filed a § 2254 petition challenging the same California conviction for second-  
27 degree felony murder. *See* S.D. Cal. Case No. 3:98-cv-1533-J-POR. That petition was  
28 denied with prejudice on September 30, 1990, and the Ninth Circuit affirmed in *Dew v.*

1 *Clarke*, 424 F.3d 381 (9th Cir. 2000). Moreover, the Ninth Circuit indicated that  
2 Petitioner has neither sought nor been granted authorization to file a second or successive  
3 § 2254 petition. *See* Doc. No. 19 at 2. Thus, the Court lacked jurisdiction to entertain the  
4 second petition.

5 Accordingly, in light of the Ninth Circuit's order, the Court **DISMISSES** the  
6 second or successive petition for writ of habeas corpus for lack of jurisdiction pursuant to  
7 28 U.S.C. § 2244(b) without prejudice. *See Burton v. Stewart*, 549 U.S. 147, 157 (2007).  
8

9 **IT IS SO ORDERED.**

10  
11 Dated: December 4, 2018



HON. MICHAEL M. ANELLO  
United States District Judge