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SOUTHERN DISTRICT OF CALIFORNIA

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George v. People of the State of California

Doc. 8

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RICHARD EARL GEORGE,  
Petitioner,  
v.  
KELLY SANTORO,  
Respondent.

Case No.: 16cv2578 BEN (PCL)

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

Petitioner Richard Earl George, a state prisoner proceeding pro se, has filed an Amended Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. This case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

**PETITION BARRED BY GATEKEEPER PROVISION**

The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner has submitted to this Court challenging his November 22, 2005 conviction in San Diego Superior Court case No. SCD 179831. On November 19, 2007, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in case No. 07cv2215 J (POR). In that petition, Petitioner challenged his conviction in San Diego Superior Court case No. SCD 179831 as well. On September 24, 2009, this Court denied the petition on the merits. (See Order filed Sept. 24, 2009 in case No. 07cv2215 J (POR) [Doc. No. 25].) Petitioner appealed that determination. On June 2, 2011, the Ninth Circuit Court of Appeals

1 affirmed this Court's denial. (See Order in *George v. Almager*, No. 09-56835 (9th Cir.  
2 June 11, 2009).)<sup>1</sup>


3 Petitioner is now seeking to challenge the same conviction he challenged in his  
4 prior federal habeas petition. Unless a petitioner shows he or she has obtained an Order  
5 from the appropriate court of appeals authorizing the district court to consider a  
6 successive petition, the petition may not be filed in the district court. See 28 U.S.C.  
7 § 2244(b)(3)(A). Here, there is no indication the Ninth Circuit Court of Appeals has  
8 granted Petitioner leave to file a successive petition.

9 **CONCLUSION**

10 Because there is no indication Petitioner has obtained permission from the Ninth  
11 Circuit Court of Appeals to file a successive petition, this Court cannot consider his  
12 Petition. Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner  
13 filing a petition in this court if he obtains the necessary order from the Ninth Circuit  
14 Court of Appeals. ***The Clerk of Court is directed to mail Petitioner a blank Application***  
15 ***for Leave to File a Second or Successive Petition or Motion Pursuant to 28 U.S.C.***  
16 ***§ 2254 or § 2255 together with a copy of this Order.***

17 **IT IS SO ORDERED.**

18  
19 DATED: December 07, 2016

20   
21 HON. ROGER T. BENITEZ  
22 United States District Judge  
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<sup>1</sup> Petitioner has filed three other petitions in this Court which have been denied as successive, 12cv0790 LAB (WVG), 12cv2376 CAB (RBB), and 13cv0555 AJB (NLS).