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

LUIS MANUEL GARCES,

Plaintiff,

v.

PEOPLE OF CALIFORNIA,

Respondent.

Case No. 17cv0816 LAB (AGS)

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

Petitioner has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. For the reasons discussed below, the case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A).

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 March 3, 2004 conviction in San Diego County Superior Court case number SCD133238. On August 12, 2009, Petitioner filed a Petition for Writ of Habeas Corpus in this Court, in case No. 09cv1767. In that petition, Petitioner challenged his March 3, 2004 conviction as well. On June 9, 2011, this Court denied the petition on the merits. (See Order filed June 7, 2011 in case No. 09cv1767 H (CAB) [ECF No. 30].) Petitioner appealed that determination. On September 13, 2011 the Ninth Circuit Court of Appeals denied Petitioner’s application to file a second or successive petition.

1 (See Order in Garces v. Yates, No. 11-71887 (9th Cir. Sept. 13, 2011).)

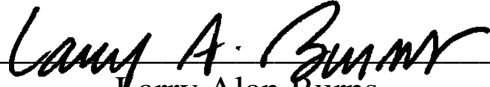
2 Petitioner is now seeking to challenge the sentence imposed as a result the conviction
3 he challenged in his prior federal habeas petition. Unless a petitioner shows he or she has
4 obtained an Order from the appropriate court of appeals authorizing the district court to
5 consider a successive petition,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

16 CONCLUSION

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

23 IT IS SO ORDERED.

24 DATED: May 2, 2017

25 
26 Larry Alan Burns
27 United States District Judge
28