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

TERRY LEWIS,

Petitioner,

v.

SAN DIEGO SUPERIOR COURT
JUDGES,

Respondents.

Case No. 18cv0340 GPC (BLM)

**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, this 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 1996 conviction in San Diego County Superior Court case number SCD119336. On December 23, 2013, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in case No. 13cv3161. (*See* Petition in SO. DIST. CA. CIVIL CASE NO. 13cv3161 LAB (JLB) [ECF No. 1]). In that petition, Petitioner challenged

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1 his 1996 conviction in San Diego Superior Court case number SCD119336 as well. (*See*
2 *id.* at 1-2.) On February 24, 2015, this Court dismissed the petition because it had been
3 filed after the expiration of the one-year statute of limitations and, moreover, Petitioner
4 had failed to exhaust state judicial remedies. (*See* Order filed Feb. 24, 2015 in case No.
5 13cv3161 [ECF No. 42].) Petitioner appealed that determination. On June 12, 2015, the
6 Ninth Circuit Court of Appeals denied Petitioner’s request for a certificate of
7 appealability. (*See* Order in *Lewis v. Vargas*, No. 15-55609 (9th Cir. June 12, 2015).)

8 Petitioner is now seeking to challenge the sentence imposed as a result of the
9 conviction he challenged in his prior federal habeas petition. Unless a petitioner shows
10 he or she has obtained an Order from the appropriate court of appeals authorizing the
11 district court to consider a successive petition, the petition may not be filed in the district
12 court. *See* 28 U.S.C. § 2244(b)(3)(A); *see also* *Burton v. Stewart*, 549 U.S. 147, 153
13 (2007) (a petition is successive where it challenges “the same custody imposed by the
14 same judgment of a state court” as a prior petition). A successive application is
15 permissible “only if it rests on a new rule of constitutional law, facts that were previously
16 unavailable, or facts that would be sufficient to show constitutional error in the
17 petitioner's conviction.” 28 U.S.C. § 2244(b)(2). “Even if a petitioner can demonstrate
18 that he qualifies for one of these exceptions, he must seek authorization from the court of
19 appeals before filing his new petition with the district court.” *Woods v. Carey*, 525 F.3d
20 886, 888 (9th Cir.2008). Here, there is no indication the Ninth Circuit Court of Appeals
21 has granted Petitioner leave to file a successive petition.

22 CONCLUSION

23 Because there is no indication Petitioner has obtained permission from the Ninth
24 Circuit Court of Appeals to file a successive petition, this Court cannot consider his
25 Petition. Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner
26 filing a petition in this court if he obtains the necessary order from the Ninth Circuit

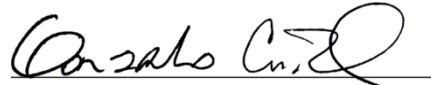
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1 Court of Appeals. For Petitioner's convenience, the Clerk of Court shall attach a blank
2 Ninth Circuit Application for Leave to File Second or Successive Petition.

3 **IT IS SO ORDERED.**

4 Dated: February 27, 2018

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6 Hon. Gonzalo P. Curiel
7 United States District Judge

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