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

EDWARD BOOTH,  
  
Petitioner,  
  
v.  
  
J. GASTELO, Warden  
  
Respondent.

Case No. 3:21-cv-1259-CAB-DEB

**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 2005 conviction in Imperial County Superior Court case number JCF14228. On November 15, 2010, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in case No. 3:10-cv-2361-JLS-MDD. (*See* Petition in SO. DIST. CA. CIVIL CASE No. 3:10-cv-2361-JLS-MDD, ECF No. 1.) In that petition, Petitioner challenged his 2005 conviction in Imperial County Superior Court case number JCF14228 as well. (*See id.* at 1–2.) On September 2, 2011, this Court dismissed the petition with prejudice because it had been filed after the expiration of the one-year

1 statute of limitations and the claims were procedurally defaulted. (*See* Order filed Nov. 2,  
2 2011 in case No. 3:10-cv-2361-JLS-MDD, ECF No. 14.) Petitioner appealed that  
3 determination. On March 29, 2012, the Ninth Circuit Court of Appeals denied  
4 Petitioner’s request for certificate of appealability. (*See* Order in *Booth v. Adams*, No. 12-  
5 55433 (9th Cir. Mar. 29, 2012), ECF No. 27.)

6 Petitioner is now seeking to challenge the same conviction he challenged in his  
7 prior federal habeas petition. Unless a petitioner shows he or she has obtained an Order  
8 from the appropriate court of appeals authorizing the district court to consider a  
9 successive petition, the petition may not be filed in the district court. *See* 28 U.S.C.  
10 § 2244(b)(3)(A); *see also* *Burton v. Stewart*, 549 U.S. 147, 153 (2007) (stating a petition  
11 is successive where it challenges “the same custody imposed by the same judgment of a  
12 state court” as a prior petition); *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir.  
13 2005) (stating the dismissal with prejudice because of a procedural default “constitutes a  
14 disposition on the merits and renders a subsequent petition second or successive for  
15 purposes of 28 U.S.C. § 2244(b)”); *McNabb v. Yates*, 576 F.3d 1028, 1030 (9th Cir.  
16 2009) (“We therefore hold that dismissal of a section 2254 habeas petition for failure to  
17 comply with the statute of limitations renders subsequent petitions second or successive  
18 for purposes of the AEDPA, 28 U.S.C. § 2244(b).”)

19 A successive application is permissible “only if it rests on a new rule of  
20 constitutional law, facts that were previously unavailable, or facts that would be sufficient  
21 to show constitutional error in the petitioner's conviction.” 28 U.S.C. § 2244(b)(2). “Even  
22 if a petitioner can demonstrate that he qualifies for one of these exceptions, he must seek  
23 authorization from the court of appeals before filing his new petition with the district  
24 court.” *Woods v. Carey*, 525 F.3d 886, 888 (9th Cir. 2008). Here, there is no indication  
25 the Ninth Circuit Court of Appeals has granted Petitioner leave to file a successive  
26 petition.

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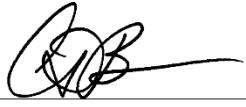
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1 **CONCLUSION**

2 Because there is no indication Petitioner has obtained permission from the Ninth  
3 Circuit Court of Appeals to file a successive petition, this Court cannot consider his  
4 Petition. Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner  
5 filing a petition in this court if he obtains the necessary order from the Ninth Circuit  
6 Court of Appeals. Further, because Petitioner has failed to make “a substantial showing  
7 of the denial of a constitutional right,” and reasonable jurists would not find debatable  
8 this Court’s assessment of his claims, the Court **DENIES** a certificate of appealability.  
9 *See* 28 U.S.C. § 2253(c); *see also* Rules Governing § 2254 Cases, Rule 11(a) (requiring  
10 the district court that issues an order denying a habeas petition to either grant or deny a  
11 certificate of appealability). ***For Petitioner’s convenience, the Clerk of Court shall***  
12 ***attach a blank Ninth Circuit Application for Leave to File Second or Successive***  
13 ***Petition.***

14 IT IS SO ORDERED.

15 Dated: July 15, 2021

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18 Hon. Cathy Ann Bencivengo  
19 United States District Judge  
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