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6	UNITED STATES DISTRICT COURT		
7	DISTRICT OF NEVADA		
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9	DEAUNDRAY GASTON,		
10	Petitioner,	Case No. 2:13-cv-00839-JAD-CWH	
11	VS.	O R D E R	
12	BRIAN E. WILLIAMS, SR., et al.,		
13	Respondents.		
14			
15	Petitioner has paid the filing fee. The court has reviewed the petition for a writ of habeas		
16	corpus pursuant to 28 U.S.C. § 2254, and the court will refer this action to the United States Court		
17	of Appeals for the Ninth Circuit because the petition is successive.		
18	Petitioner challenges the validity of the judgment of conviction in <i>State v. Gaston</i> , Case No.		
19	92C107652, in the Eighth Judicial District Court of the State of Nevada. Petitioner was convicted		
20	of first-degree murder with the use of a deadly weapon. Petitioner challenged the same judgment of		
21	conviction in Gaston v. Cox, Case No. 2:04-cv-00076-RLH-LRL. The court dismissed that action		
22	because it was untimely pursuant to 28 U.S.C. § 2244(d). Petitioner appealed that dismissal. Both		
23	this court and the Court of Appeals for the Ninth Circuit denied a certificate of appealability.		
24	"[D]:		

"[D]ismissal of a section 2254 habeas petition for failure to comply with the statute of
limitations renders subsequent petitions second or successive for purposes of . . . 28 U.S.C. §
2244(b)." *McNabb v. Yates*, 576 F.3d 1028, 1030 (9th Cir. 2009). Petitioner must first obtain
authorization from the court of appeals before this court can consider his petition. 28 U.S.C.
§ 2244(b)(3).

1	Petitioner has submitted a motion for appointment of counsel (Dkt. #2). This motion	n is
2	moot because the court is referring the action to the court of appeals.	

3 IT IS THEREFORE ORDERED that the clerk of the court file the petition for a writ of
4 habeas corpus.

5 IT IS FURTHER ORDERED that the motion for appointment of counsel (Dkt. #2) is
6 DENIED as moot.

7 IT IS FURTHER ORDERED that the clerk shall add Catherine Cortez Masto, Attorney
8 General for the State of Nevada, as counsel for respondents.

IT IS FURTHER ORDERED that **the clerk shall electronically serve respondents** with 10 a copy of the petition and a copy of this Order. No response by respondents is necessary.

IT IS FURTHER ORDERED that, pursuant to Circuit Rule 22-3(a), the clerk of the court
 shall refer this action to the United States Court of Appeals for the Ninth Circuit.

13 IT IS FURTHER ORDERED that the clerk of the court shall administratively close this
14 action.

DATED: October 15, 2013.

