

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DELBERT M. GREENE,

Petitioner,

v.

STATE OF NEVADA, et al.,

Respondents.

Case No. 2:15-cv-02470-GMN-CWH

ORDER

Petitioner Delbert M. Greene has submitted a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Greene's application to proceed *in forma pauperis* (ECF No. 1) shall be granted.

Greene has previously filed at least one federal habeas petition challenging the same judgment of conviction, C184914-1. 28 U.S.C. § 2244(3)(A) provides: "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." Where a petition has been dismissed with prejudice as untimely or because of procedural default, the dismissal constitutes a disposition on the merits and renders a subsequent petition second or successive for purposes of 28 U.S.C. § 2244. *McNabb v. Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir. 2005).

On February 12, 2016, Greene's habeas petition challenging the same state judgment of conviction in federal case no. 3:09-cv-00601-RCJ-VPC was dismissed with prejudice as procedurally barred, and judgment was entered (3:09-cv-00601-RCJ-VPC,

ECF Nos. 65, 66). In fact, Greene filed a notice of appeal in that case on March 30, 2016, which is currently pending before the Ninth Circuit Court of Appeals. *Id.* at ECF No. 67. The instant petition is, therefore, a successive petition, which requires petitioner to seek and obtain leave of the appeals court to pursue. See 28 U.S.C. § 2244(b)(3) et seq. Accordingly, Greene's petition is dismissed with prejudice as successive.

IT IS THEREFORE ORDERED that petitioner's application to proceed *in forma pauperis* (ECF No. 1) is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall detach and file the petition (ECF No. 1-1).

IT IS FURTHER ORDERED that the petition is **DISMISSED** with prejudice as successive.

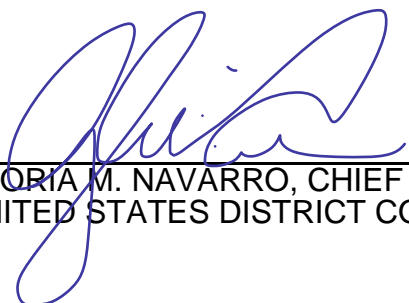
IT IS FURTHER ORDERED that petitioner's motion for appointment of counsel (ECF No. 2) is **DENIED** as moot.

IT IS FURTHER ORDERED that the Clerk shall add Adam Paul Laxalt, Attorney General for the State of Nevada, as counsel for respondents.

IT IS FURTHER ORDERED that the Clerk shall electronically serve respondents with a copy of the petition and a copy of this order. No response by respondents is necessary.

IT IS FURTHER ORDERED that the Clerk shall enter judgment accordingly and close this case.

DATED: 14 April 2016.



GLORIA M. NAVARRO, CHIEF JUDGE
UNITED STATES DISTRICT COURT