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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

DARION NICHOLSON,  
  
v.  
JO GENTRY, et al.,  
  
Petitioner,  
  
Respondents.

Case No. 2:16-cv-02553-JCM-NJK

ORDER

Petitioner Darion Nicholson has submitted a *pro se* habeas petition (ECF No. 1-1). His application to proceed *in forma pauperis* is incomplete because he has failed to include the required inmate account statements (ECF No. 1). LSR 1-2. This action, therefore, has not been properly commenced.

Moreover, this court may take judicial notice of its docket, and Nicholson has previously filed at least two federal habeas petitions challenging the same judgment of conviction, C204941. 28 U.S.C. § 2244 (b)(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).

1 On June 9, 2009, Nicholson's habeas petition challenging the same state  
2 judgment of conviction in federal case no. 2:06-cv-01118-KJD-GWF was denied, and  
3 judgment was entered on June 11, 2009 (2:06-cv-01118-KJD-GWF, ECF Nos. 14, 15).  
4 Moreover, Nicholson recently attempted to initiate a federal habeas case challenging  
5 the same judgment of conviction in case no. 2:16-cv-02236-JAD-NJK. The court  
6 dismissed that action for failure to file the requisite financial documentation in support of  
7 the application to proceed *in forma pauperis* (2:16-cv-02236-JAD-NJK, ECF No. 3).  
8 The instant petition is, therefore, a successive petition, which requires petitioner to seek  
9 and obtain leave of the appeals court to pursue. See 28 U.S.C. § 2244(b)(3) et seq.  
10 Accordingly, this action is dismissed as improperly commenced and as a second and  
11 successive petition.

12 **IT IS THEREFORE ORDERED** that petitioner's application to proceed *in forma*  
13 *pauperis* (ECF No. 1) is **DENIED** as incomplete.

14 **IT IS FURTHER ORDERED** that the clerk shall detach and file the petition (ECF  
15 No. 1-1) and shall serve the petition and a copy of this order on respondents.

16 **IT IS FURTHER ORDERED** that the clerk shall add Adam Paul Laxalt, Nevada  
17 Attorney General, as counsel for respondents.

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

20 **IT IS FURTHER ORDERED** that because reasonable jurists would not find the  
21 court's conclusions to be debatable or wrong, a certificate of appealability is **DENIED**.

22 **IT IS FURTHER ORDERED** that the clerk shall enter judgment accordingly and  
23 close this case.

24 DATED: December 19, 2016.

25   
26 JAMES C. MAHAN  
27 UNITED STATES DISTRICT JUDGE  
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