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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MARCUS SHARIF MCNEAL,	Case No. 2:17-cv-02589-RFB-CWH
Petitioner,	ORDER
v.	
JO GENTRY, et al.,	
Respondents.	

Petitioner Marcus Sharif McNeal has submitted a petition for a writ of habeas corpus (ECF No. 1-1) as well as an application to proceed *in forma pauperis*. Petitioner indicates on the face of his petition that he has already filed a habeas petition challenging the same judgment of conviction—C-288873-1—in Case No. 2:16-cv-01618-JAD-GWF.

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).

1 McNeal's earlier-filed petition is in fact currently pending before the court in Case
2 No. 2:16-cv-01618-JAD-GWF. The instant petition, therefore, is duplicative and/or a
3 second or successive habeas corpus petition. *Henderson v. Lampert*, 396 F.3d 1049,
4 1053 (9th Cir. 2005). Accordingly, this petition shall be **dismissed**.

5 Reasonable jurists would not find this conclusion to be debatable or wrong, and
6 the court will not issue a certificate of appealability.

7 **IT IS THEREFORE ORDERED** that the Clerk shall **DETACH** and **FILE** the petition
8 (ECF No. 1-1).

9 **IT IS FURTHER ORDERED** that petitioner's application to proceed *in forma*
10 *pauperis* (ECF No. 1) is **DENIED** as moot.

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

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

15 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.

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 Clerk shall electronically serve the petition,
19 along with a copy of this order, on respondents. No response by respondents is
20 necessary.

21 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly
22 and close this case.

23
24 DATED: 8 November 2017.

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27 RICHARD F. BOULWARE, II
28 UNITED STATES DISTRICT JUDGE