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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Jose Gallimort,
Petitioner

v.

Brian Williams, et al.,
Respondents

Case No.: 2:18-cv-00127-JAD-GWF

Order Dismissing Petition

[ECF No. 2]

Pro se petitioner Jose Gallimort is serving time at the High Desert State Prison for first-degree kidnapping and battery with the use of a deadly weapon.¹ He petitions for a writ of habeas corpus under 28 U.S.C. § 2254, arguing that his Fourth and Fourteenth Amendment rights were violated 20 years ago.² It appears that his claims are time barred, so I ordered Gallimort to show cause why they aren't or why he is entitled to equitable tolling.³

Gallimort responded that he is entitled to equitable tolling because he was diligently pursuing his rights but was hindered by a language barrier.⁴ In an effort to show his diligence in his pursuit for habeas relief, Gallimort represents that he has filed five habeas petitions "along with many of the corresponding appeals and related motions."⁵ But a petitioner may not file a second or successive habeas petition without "an order authorizing the district court to consider the application."⁶ Even a petition that has been dismissed with prejudice as untimely or because of procedural default constitutes a disposition on the merits and renders a subsequent petition

¹ ECF No. 1-1 at 2.

² *Id.* at 3–9.

³ ECF No. 6.

⁴ ECF No. 7.

⁵ *Id.* at 2. Some of those previous petitions are: (1) case no. 3:01-cv-00525-DWH-RAM; (2) 2:13-cv-02195-GMN-VCF; and (3) 2:10-cv-00295-JCM-PAL.

⁶ 28 U.S.C. § 2244(3)(A).

1 second or successive.⁷ At least one of Gallimort's previous petitions was denied on its merits,
2 and that ruling was affirmed by the Ninth Circuit.⁸ This petition is therefore successive, and
3 Gallimort has not shown or otherwise indicated that he has authority from the Ninth Circuit to
4 pursue it.

5 Accordingly, the **Clerk of Court** is directed to **DETACH and FILE the petition [ECF**
6 **No. 1-1]**. IT IS HEREBY ORDERED that the petition is **DISMISSED** as successive. And
7 because reasonable jurists would not find my decision to dismiss this unauthorized, successive
8 petition to be debatable or wrong, I decline to issue a certificate of appealability.

9 IT IS FURTHER ORDERED that Gallimort's motion for appointment of counsel [ECF
10 **No. 2]** is **DENIED as moot**.

11 The **Clerk of Court** is directed to **ENTER JUDGMENT** accordingly and **CLOSE**
12 **THIS CASE**.

13 Dated: July 23, 2018

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16 U.S. District Judge Jennifer A. Dorsey
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26 ⁷ *McNabb v. Yates*, 576 F.3d 1028, 1029–30 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d
27 1049, 1053 (9th Cir. 2005).

28 ⁸ See ECF Nos. 34, 35, 46, 47 in 3:01-cv-00525-DWH-RAM.