Palovich v. Gentry

UNITED STATES DISTRICT COURT DISTRICT OF NEVADA 3 JOSEPH PALOVICH, Case No.: 2:18-cv-00240-APG-PAL Petitioner **ORDER** 5 v. 6 JO GENTRY, et al., 7 Respondents 8 9 Petitioner Joseph Palovich moves to stay this case while he seeks Ninth Circuit authorization to file a successive petition. ECF No. 7. The respondents oppose this request. ECF 11 No. 8. The court lacks jurisdiction over this matter, and therefore the petition is dismissed without prejudice. 13 "Before a second or successive application permitted by this section is filed in the district

14 court, the applicant shall move in the appropriate court of appeals for an order authorizing the 15 district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). Palovich states that he is 16 seeking Ninth Circuit authorization and asks me to stay this case pending such authorization. But this court lacks jurisdiction over a second or successive petition that has not first been 18 authorized by the court of appeals under 28 U.S.C. § 2244(b). Burton v. Stewart, 549 U.S. 147 (2007). I have no authority to stay something over which I have no jurisdiction. Thus, I must

IT IS THEREFORE ORDERED that petitioner's motion to stay (ECF No. 7) is DENIED.

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dismiss the petition without prejudice.

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IT IS FURTHER ORDERED that the petition is DISMISSED without prejudice as set 2 forth in this order. IT IS FURTHER ORDERED that a certificate of appealability is denied. IT IS FURTHER ORDERED that respondents' motion for compliance (ECF No. 5) is **DENIED** as moot. IT IS FURTHER ORDERED that the Clerk shall enter judgment accordingly and close 7 this case. Dated: February 27, 2019. Andrew P. Gordon United States District Judge