



1 **Discussion**

2 To bring a second or successive §2255 motion, a defendant first “shall move in the  
3 appropriate court of appeals for an order authorizing the district court to consider the  
4 application.” 28 U.S.C. §§2244, 2255(h). As Smith previously moved for §2255 relief, he must  
5 move for and obtain an order from the Ninth Circuit Court of Appeals authorizing me to consider  
6 his present motion. He has not done so. Accordingly, I cannot consider his present motion and  
7 must deny it as an unauthorized second or successive §2255 motion.

8 **Certificate of Appealability**

9 To appeal this order, Smith must receive a certificate of appealability.<sup>1</sup> To obtain that  
10 certificate, he “must make a substantial showing of the denial of a constitutional right, a  
11 demonstration that . . . includes showing that reasonable jurists could debate whether (or, for that  
12 matter, agree that) the petition should have been resolved in a different manner or that the issues  
13 presented were adequate to deserve encouragement to proceed further.”<sup>2</sup> This standard is  
14 “lenient.”<sup>3</sup>

15 I have denied Smith’s motion because it is a second or successive §2255 motion for  
16 which he has neither sought nor obtained an order from the Ninth Circuit authorizing me to  
17 consider his motion. I will thus deny Smith’s request for a certificate of appealability.

18 IT IS THEREFORE ORDERED that defendant Jermaine Smith’s motion under 28  
19 U.S.C. § 2255 (ECF No. 1608) is DENIED.

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<sup>1</sup> 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b)(1); 9th Cir. R. 22–1(a).

22 <sup>2</sup> *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000) (quotation omitted).

23 <sup>3</sup> *Hayward v. Marshall*, 603 F.3d 546, 553 (9th Cir. 2010) (en banc).

1 IT IS FURTHER ORDERED that defendant Jermaine Smith's request for a certificate of  
2 appealability is DENIED.

3 IT IS FURTHER ORDERED that the Clerk of Court is directed to enter a separate civil  
4 judgment denying defendant Jermaine Smith's § 2255 motion. The Clerk also shall file this  
5 order and the civil judgment in this case and in the related civil case number 2:18-cv-1487-APG.

6 DATED this 19th day of November, 2018.

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10 ANDREW P. GORDON  
11 UNITED STATES DISTRICT JUDGE  
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