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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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LAMAR ROWELL,

Petitioner,

v.

NEVADA, STATE OF et al.,

Respondents.

Case No. 3:10-cv-00044-RCJ-VPC

ORDER

On March 21, 2011, this court denied petitioner Lamar Rowell's *pro se* habeas corpus petition on the merits, and judgment was entered (ECF Nos. 33, 34). Rowell appealed, and the Ninth Circuit denied a certificate of appealability (ECF Nos. 35, 38).

On June 2, 2011, Rowell filed a motion to set aside judgment for fraud on the court, this court denied the motion, and the Ninth Circuit denied a certificate of appealability (ECF Nos. 39, 43, 49).

On December 11, 2013, Rowell filed a motion to set aside judgment, this court denied the motion, and the Ninth Circuit denied a certificate of appealability (ECF Nos. 50, 52, 56).

Now before the court are Rowell's motion for leave to amend petition and to vacate the judgment, motion for evidentiary hearing, and motion for judicial notice of fraud on the court, filed almost six years after judgment was entered and this case was closed (ECF Nos. 58, 59, 63). He now claims that he was improperly adjudicated a habitual criminal because he is actually innocent of having three prior felony convictions. This is a new claim that the same judgment of conviction violated his

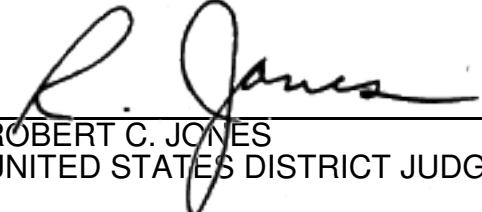
1 federal constitutional rights. Thus, the purported motion for leave to amend and to  
2 vacate the judgment is in reality a successive petition. 28 U.S.C. § 2244(3)(A) provides:  
3 “[b]efore a second or successive application permitted by this section is filed in the  
4 district court, the applicant shall move in the appropriate court of appeals for an order  
5 authorizing the district court to consider the application.” Where a petition has been  
6 dismissed with prejudice as untimely or because of procedural default, the dismissal  
7 constitutes a disposition on the merits and renders a subsequent petition second or  
8 successive for purposes of 28 U.S.C. § 2244. *McNabb v. Yates*, 576 F.3d 1028, 1029-  
9 1030 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir. 2005).

10 Rowell’s frivolous motions are denied as a successive petition. Reasonable  
11 jurists would not find the court’s conclusions to be debatable or wrong, and the court will  
12 not issue a certificate of appealability.

13 **IT IS THEREFORE ORDERED** that petitioner’s motion for leave to amend and to  
14 vacate judgment (ECF No. 58), motion for evidentiary hearing (ECF No. 59), and motion  
15 or judicial notice of fraud on the court (ECF No. 63) are all **DENIED**.

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

17  
18 DATED: June 14, 2017

19   
20 ROBERT C. JONES  
21 UNITED STATES DISTRICT JUDGE