

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ALQUANDRE H. TURNER,

Case No. 3:17-cv-00151-HDM-VPC

Petitioner,

ORDER

v.

RENEE BAKER, et al.,

Respondents.

Petitioner Alquandre H. Turner's *pro se* petition for writ of habeas corpus is before the court on his response to this court's show-cause order as to why the petition is not subject to dismissal as time-barred (ECF No. 7). Turner's response brought to the court's attention the fact that the petition must be dismissed as successive.

Turner has previously filed two federal habeas petitions challenging the same judgment of conviction, 06C219519. 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).

First, Turner submitted a federal habeas petition in case no. 3:08-cv-00435-BES-VPC challenging the same judgment of conviction. On January 6, 2009, the court

1 dismissed the petition without prejudice due to Turner's failure to respond in any way to
2 this court's order directing Turner to pay the \$5.00 filing fee. *Id.* at ECF No. 9.

3 Judgment was entered. *Id.* at ECF No. 10.

4 On February 18, 2014, Turner's second habeas petition challenging the same
5 judgment of conviction was dismissed with prejudice as untimely, and judgment was
6 entered (3:13-cv-00096-RCJ-WGC, ECF Nos. 10, 11). Turner filed a notice of appeal,
7 and the Ninth Circuit Court of Appeals denied his request for a certificate of
8 appealability. *Id.* at ECF Nos. 12, 14. The instant petition is, therefore, a successive
9 petition, which requires petitioner to seek and obtain leave of the appeals court to
10 pursue. See 28 U.S.C. § 2244(b)(3) et seq. Accordingly, Turner's petition is dismissed
11 with prejudice as successive.

12 **IT IS THEREFORE ORDERED** that the petition is **DISMISSED** with prejudice as
13 successive.

14 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**, as
15 jurists of reason would not find the court's dismissal of this petition to be debatable or
16 incorrect.

17 **IT IS FURTHER ORDERED** that the Clerk shall enter judgment accordingly and
18 close this case.

19 Dated: June 1st, 2017.

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22 Howard D. McKibben, Senior U.S. District Judge
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