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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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MICHAEL WILLIAMS,  
  
Petitioner,  
  
v.  
  
STATE OF NEVADA, *et al.*,  
  
Respondents.

Case No. 3:17-cv-00647-MMD-WGC

ORDER

Petitioner Michael Williams has submitted a petition for a writ of habeas corpus (ECF No. 1-1). His application to proceed *in forma pauperis* (ECF No. 1) will be granted.

Section 2244(3)(A) provides that “[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.” 28 U.S.C. § 2244(3)(A). 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).

Petitioner indicates on the face of his petition that he seeks to challenge the state judgment of conviction in case no. 99C162028 (ECF No. 1-1 at 3). This Court takes judicial notice of its docket, and Williams previously filed case no. 3:04-cv-00225-RCJ-VPC, in which he challenged the same state judgment of conviction. On September 28, 2007, this

1 Court denied the first petition on the merits. (3:04-cv-00225-RCJ-VPC, ECF Nos. 33, 34.)  
2 On August 19, 2014, the Ninth Circuit Court of Appeals dismissed petitioner's untimely  
3 appeal for lack of jurisdiction. (*Id.*, ECF No. 46.)

4 This petition, therefore, is a second or successive habeas corpus petition.  
5 *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9<sup>th</sup> Cir. 2005). Petitioner was required to  
6 obtain authorization from the Ninth Circuit Court of Appeals before he could proceed with  
7 a second or successive petition. 28 U.S.C. § 2244(b)(3). Petitioner had not indicated that  
8 he has received such authorization from the court of appeals. Accordingly, this petition  
9 will be dismissed as second and successive.

10 Reasonable jurists would not find this conclusion to be debatable or wrong, and  
11 the Court will not issue a certificate of appealability.

12 It is therefore ordered that the Clerk detach and file the petition (ECF No. 1-1).

13 It is further ordered that petitioner's application to proceed *in forma pauperis* (ECF  
14 No. 1) is granted.

15 It is further ordered that the petition is dismissed as a successive petition.

16 It is further ordered that a certificate of appealability is denied.

17 It is further ordered that the Clerk add Adam Paul Laxalt, Nevada Attorney General,  
18 as counsel for respondents.

19 It is further ordered that the Clerk electronically serve the petition, along with a  
20 copy of this order, on respondents. No response by respondents is necessary.

21 It is further ordered that the Clerk enter judgment accordingly and close this case.

22 DATED THIS 13<sup>th</sup> day of November 2017.

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26 MIRANDA M. DU  
27 UNITED STATES DISTRICT JUDGE  
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