

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 * * *

9 PHILIP HUGHES, Case No. 3:17-cv-00723-HDM-WGC
10 v. Petitioner,
11 ISIDRO BACA, et al., ORDER
12 Respondents.
13

14 Petitioner Philip Hughes has submitted a § 2254 petition for a writ of habeas
15 corpus and paid the filing fee (see ECF No. 1). The petition shall be dismissed as
16 second and successive.

17 28 U.S.C. § 2244(3)(A) provides: “[b]efore a second or successive application
18 permitted by this section is filed in the district court, the applicant shall move in the
19 appropriate court of appeals for an order authorizing the district court to consider the
20 application.” Where a petition has been dismissed with prejudice as untimely or
21 because of procedural default, the dismissal constitutes a disposition on the merits and
22 renders a subsequent petition second or successive for purposes of 28 U.S.C. § 2244.
23 *McNabb v. Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009); *Henderson v. Lampert*,
24 396 F.3d 1049, 1053 (9th Cir. 2005).

25 Petitioner indicates on the face of his petition that he seeks to challenge the state
26 judgment of conviction in case no. C176929 (ECF No. 2, p. 2). He also acknowledges
27 in his petition that he previously filed case no. 2:10-cv-00805-KJD-VCF, in which he
28 challenged the same state judgment of conviction. On September 17, 2014, this court

1 denied the petition on the merits and denied a certificate of appealability (2:10-cv-
2 00805-KJD-VCF, ECF Nos. 27, 28). This court denied petitioner's motion to alter or
3 amend judgment, and the Ninth Circuit Court of Appeals denied a certificate of
4 appealability (ECF Nos. 43, 46).

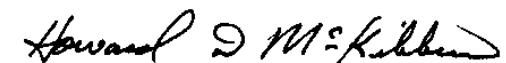
5 This petition, therefore, is a second or successive habeas corpus petition.
6 *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th Cir. 2005). Petitioner was required to
7 obtain authorization from the Ninth Circuit Court of Appeals before he could proceed.
8 28 U.S.C. § 2244(b)(3). Petitioner indicates on the face of this petition that Ninth Circuit
9 has not given him leave to file it. Accordingly, this petition shall be dismissed as second
10 and successive. Reasonable jurists would not find this conclusion to be debatable or
11 wrong, and the court will not issue a certificate of appealability.

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

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

15 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly
16 and close this case.

17 DATED: April 10, 2018.

18 

19
20 HOWARD D. MCKIBBEN
21 UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28