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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

CHRISTOPHER RYAN HUBBLE,

v.

RENEE BAKER,

Respondents.

Case No. 3:19-cv-00124-LRH-WGC
ORDER

This habeas matter under 28 U.S.C. § 2254 comes before the court on the parties' responses to this court's order to show cause regarding whether the petition is time-barred (ECF Nos. 2, 3, 4, 8). In the course of that briefing, it has come to the court's attention that Hubble has previously challenged this judgment of conviction in Nevada state case no. 03C189061. See 3:08-cv-00068-BES-RAM. Thus, this petition is dismissed as second and successive.

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).

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In 2008, this court granted respondents' motion to dismiss Hubble's habeas corpus petition challenging the same judgment of conviction because it was time-barred, and judgment was entered. 3:08-cv-00068-BES-RAM, ECF Nos. 10, 11. There is no indication that Hubble has obtained authorization from the court of appeals to file a successive petition. Thus, this petition is dismissed as a successive petition. Reasonable jurists would not find the court's conclusions to be debatable or wrong, and the court will not issue a certificate of appealability.

IT IS THEREFORE ORDERED that the petition (ECF No. 1) is **DISMISSED** with prejudice as second and successive.

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

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

DATED this 2nd day of October, 2019.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE