

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NOV 8 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ROXANNE ARI,

Petitioner-Appellant,

v.

THE PEOPLE,

Respondent-Appellee.

No. 19-16924

D.C. No. 3:19-cv-02619-WHA
Northern District of California,
San Francisco

ORDER

Before: SILVERMAN and OWENS, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.”

Slack v. McDaniel, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2);

Gonzalez v. Thaler, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

DENIED.

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IN THE UNITED STATES DISTRICT COURT

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7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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ROXANNE ARI,

No. C 19-2619 WHA (PR)

Petitioner,

ORDER OF DISMISSAL

v.

(Dkt. Nos. 2, 5, 9)

WARDEN,

Respondent.

Petitioner, a state prisoner, has filed a motion requesting “relief from” a criminal judgment from the Contra Costa County Superior Court on the grounds that her sentence is illegal. Because petitioner seeks relief from a state criminal judgment, her motion is construed as petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, and dismissed for being a successive petition to petitioner’s prior habeas petitions in federal court challenging the same criminal judgment.

A second or successive petition may not be filed in this court unless petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A). This requirement is jurisdictional. *Burton v. Stewart*, 549 U.S. 147, 156 (2007) (per curiam). In 2003, petitioner filed a habeas petition in federal court challenging her 1991 state court judgment in Contra Costa County Superior Court Case Number 900427-6. *See Ari v. Mitchell*, No. C 03-5171 WHA (PR); *see also Ari v. Warden*, No. C 18-4437 WHA (PR) (dismissing petition as successive). The petition was dismissed as untimely and successive in 2004. The instant petition challenges the same state court judgment. It is undisputed that petitioner has not sought

1 or obtained the necessary authorization from the United States Court of Appeals for the Ninth
2 Circuit to file a second or successive petition under Section 2244(b)(3)(A).

3 Accordingly, the petition is **DISMISSED** without prejudice to refiling if petitioner obtains
4 the necessary order from the United States Court of Appeals. Petitioner's motions for leave to
5 proceed in forma pauperis are **GRANTED**, and her motion for appointment of counsel is **DENIED**
6 in light of the dismissal of her case.

7 No certificate of appealability is warranted in this case because a reasonable jurist would
8 not find the dismissal of this petition debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484
9 (2000).

10 **IT IS SO ORDERED.**

11 Dated: July 9, 2019.


12 WILLIAM ALSUP
13 UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROXANNE ARI,

No. C 19-2619 WHA (PR)

Petitioner,

JUDGMENT

v.

WARDEN,

Respondent.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

Dated: July 9, 2019.

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ROXANNE ARI,

Petitioner-Appellant,

v.

THE PEOPLE,

Respondent-Appellee.

No. 19-16924

D.C. No. 3:19-cv-02619-WHA
Northern District of California,
San Francisco

ORDER

Before: TALLMAN and NGUYEN, Circuit Judges.

Appellant's November 20, 2019, filing is construed as a motion for reconsideration (Docket Entry No. 7) and is denied. *See* 9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

**Additional material
from this filing is
available in the
Clerk's Office.**