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7 IN THE UNITED STATES COURT OF APPEAL
8 FOR THE NINTH CIRCUIT

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FILED	
Jun 17 2022	
CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY S/AKR DEPUTY	

10 Adam Alexander Limbrick
11 PETITIONER,

CASE NO.

D.C. CASE NO.

12 22cv00063-LL-WVG

13 V.
14 RAYMOND MADDEN, WARDEN
15 RESPONDENT,

16 APPLICATION FOR CERTIFICATE
17 OF APPEALABILITY

18 PETITIONER COMES PURSUANT TO 28 U.S.C § 2253 (c)(2),
19 SEEKING CERTIFICATE OF APPEALABILITY (COA) FROM THE JUDGEMENT OF
20 THE DISTRICT COURT DENYING PETITION FOR WRIT OF HABEAS CORPUS.

21 IN ACCORDANCE WITH THE PREREQUISITES OF § 2253 (c)(2),
22 PETITIONER SUBMITS THAT THE PETITION "MADE A SUBSTANTIAL SHOWING
23 OF THE DENIAL OF A CONSTITUTIONAL RIGHT". SLACK v. McDANIEL (2000)
24 120 S. CT. 1595. UNDER THE SLACK STANDARD, PETITIONER "MUST MAKE
25 A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL
26 RIGHT (WHICH) INCLUDES SHOWING THAT REASONABLE JURISTS COULD
27 111

APPENDIX-A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 29 2022

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

ADAM LIMBRICK,

Petitioner-Appellant,

v.

RAYMOND MADDEN, Warden,

Respondent-Appellee.

No. 22-55666

D.C. No.

3:22-cv-00063-LL-WVG

Southern District of California,
San Diego

ORDER

Before: CLIFTON and VANDYKE, 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.

APPENDIX - B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ADAM ALEXANDER LIMBRICK

Petitioner,

V.

RAYMOND MADDEN, Warden,

Respondent.

Case No.: 22cv00063-LL-WVG

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION
PURSUANT TO 28 U.S.C.
§ 2244(B)(3)(a) GATEKEEPER
PROVISION**

Petitioner, a state prisoner proceeding *pro se*,¹ has filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, challenging his November 30, 2006, convictions in San Diego County Superior Court case number SCD187132 for (1) first degree murder committed during the course of a robbery; (2) attempted murder; (3) two counts of robbery; and (4) one count of shooting at an inhabited dwelling, for which he was sentenced to life in prison without the possibility of parole plus consecutive terms of 25 years to life and 48 years. ECF No. 1 at 1-2, 18. Petitioner claims that “[i]t has since become clear that” his codefendant, who testified at their joint trial that Petitioner was the

¹ In reviewing the instant Petition, the Court is mindful that “[a] document filed *pro se* is to be liberally construed … and a *pro se* [pleading], however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal quotation marks and citation omitted).

1 shooter, "has a documented record of dishonesty and making false, self-serving statements,
 2 even under oath . . . and, in fact, several years later testified under oath to a different version
 3 of events regarding the night in question . . . and no longer implicates Petitioner." *Id.* at 7-
 4 10.

5 **PETITION BARRED BY GATEKEEPER PROVISION**

6 The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner
 7 has submitted to this Court challenging his November 30, 2006, conviction in San Diego
 8 Superior Court case number SCD187132. On November 17, 2010, Petitioner filed in this
 9 Court a Petition for a Writ of Habeas Corpus challenging that same conviction. *See*
 10 *Limbrick v. Uribe*, No. 3:10-cv-02376-JLS-MDD (S.D. Cal. Nov. 17, 2010), ECF No. 1.
 11 He claimed, *inter alia*, that his due process rights were violated by the introduction of his
 12 co-defendant's testimony. *Id.* at 17. On August 26, 2013, this Court denied the petition
 13 on the merits of the claims presented and denied a certificate of appealability, observing in
 14 part that "the record supports the state court's finding that there was 'strong and ample
 15 independent evidence against (Petitioner) apart from [his co-defendant]'s testimony and
 16 statements," including that Petitioner was identified as the shooter by another witness
 17 whose testimony was corroborated. *See id.* at ECF No. 32 (adopting the magistrate judge's
 18 report and recommendation, denying the petition for writ of habeas corpus, and denying
 19 the certificate of appealability). Petitioner appealed to the Court of Appeals for the Ninth
 20 Circuit which also denied a certificate of appealability. *See id.* at ECF No. 36; *see also*
 21 *Limbrick v. Uribe*, No. 13-56709 (9th Cir. June 25, 2014).

22 Petitioner states that he is now seeking to challenge the same conviction he
 23 challenged in his prior federal habeas petition on the basis that sometime after his
 24 conviction, it came his attention that his co-defendant has a history of false testimony and
 25 no longer implicates him as the shooter. ECF No. 1 at 1-10.

26 28 U.S.C. § 2244(b)(2) provides that:

27 A claim presented in a second or successive habeas corpus
 28 application under section 2254 that was not presented in a prior
 application shall be dismissed unless—

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence, and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(1)-(2)(A)(B).

This provision creates a “gatekeeping” mechanism for consideration of second or successive petitions. *Felker v. Turpin*, 518 U.S. 651, 657 (1996). “Before 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(b)(3)(A). A petition is successive where it challenges “the same custody imposed by the same judgment of a state court” as a prior petition. *Burton v. Stewart*, 549 U.S. 147, 153 (2007); *Slack v. McDaniel*, 529 U.S. 473, 485-86 (2000) (noting that a petition is considered second or successive if the first petition was denied on the merits of the claims raised).

Even if Petitioner’s claim of newly discovered evidence that his co-defendant now admits he testified falsely satisfies 28 U.S.C. § 2244(b)(2)(B), he must first obtain authorization from the Ninth Circuit Court of Appeals to file a petition in this Court. *See Rishor v. Ferguson*, 882 F.3d 482, 490 (9th Cir. 2016) (stating that a failure to obtain appellate court authorization for filing a successive petition acts as a jurisdictional bar). Thus, unless a Petitioner shows he or she has obtained an Order from the appropriate court of appeals authorizing the district court to consider a successive petition, the petition may not be filed in this district court. *Id.*

Here, Petitioner admits he has challenged this conviction in this Court in a prior habeas petition but does not state that the Ninth Circuit Court of Appeals has granted him

1 leave to file a successive petition.

2 **CONCLUSION AND ORDER**

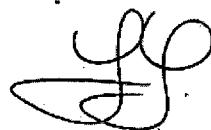
3 Because there is no indication Petitioner has obtained permission from the Ninth
 4 Circuit Court of Appeals to file a successive petition, this Court cannot consider his
 5 Petition. Accordingly, the Court **DISMISSES** this action *without prejudice* to Petitioner
 6 filing a petition in this court if he obtains the necessary order from the Ninth Circuit Court
 7 of Appeals. If Petitioner has already been granted permission from the Ninth Circuit and
 8 has only inadvertently omitted it from his Petition, he may, **on or before June 22, 2022**,
 9 present the Court with the authorization and request to have this case reopened.

10 The rules governing habeas cases brought in federal court by state prisoners require
 11 a district court, when issuing an order denying such a petition, to either grant or deny a
 12 certificate of appealability (“COA”). *See* Rules Governing § 2254 Cases, Rule 11(a).
 13 “When the district court denies a habeas petition on procedural grounds without reaching
 14 the prisoner’s underlying constitutional claim, a COA should issue when the prisoner
 15 shows, at least, that jurists of reason would find it debatable whether the petition states a
 16 valid claim of the denial of a constitutional right and that jurists of reason would find it
 17 debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S.
 18 at 484. Under that standard, the Court **DENIES** a certificate of appealability.

19 ***The Clerk of Court is directed to send Petitioner a blank Ninth Circuit Application
 20 for Leave to File a Second or Successive Petition Under 28 U.S.C. § 2254 together with
 21 a copy of this Order.***

22 **IT IS SO ORDERED.**

23 DATED: May 16, 2022



24 **HON. LINDA LOPEZ**
 25 United States District Judge
 26
 27
 28