

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Anthony M. King v. Edward Borla, Warden

No. CV 25-8807-RGK(E) · No. No. CV 25-8807-RGK(E); 2:25-cv-08807 · Decided October 3, 2025

SUMMARY

The United States District Court for the Central District of California dismissed Anthony M. King’s successive petition for a writ of habeas corpus under 28 U.S.C. § 2254. The court held that King had not obtained authorization from the Ninth Circuit to file the petition, which challenged the same state criminal case previously litigated in federal court, and dismissed the petition without prejudice.

CASE DETAILS

COURT	United States District Court for the Central District of California
JURISDICTION	United States District Court for the Central District of California
DECIDED	October 3, 2025
DOCKET	No. CV 25-8807-RGK(E); 2:25-cv-08807
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner filed a second petition under 28 U.S.C. § 2254 challenging the same state-court criminal case previously challenged in a habeas action that had been dismissed with prejudice as untimely. The district court dismissed the new petition without prejudice because petitioner had not obtained authorization from the Ninth Circuit to file a second or successive petition.
STANDARD OF REVIEW	The court applied the statutory gatekeeping requirements for second or successive habeas petitions under 28 U.S.C. § 2244(b).
PRECEDENTIAL VALUE	unpublished
PARTIES	Anthony M. King v. Edward Borla, Warden

TOPICS

- successive petitions
- federal habeas corpus
- post-conviction relief
- appellate procedure

PRACTICE AREAS

- federal habeas corpus
- post-conviction relief
- successive petitions

QUESTIONS PRESENTED

1. Whether the present § 2254 petition was a second or successive petition requiring prior authorization from the Ninth Circuit under 28 U.S.C. § 2244(b).
2. Whether dismissal of King's prior habeas petition as untimely constituted an adjudication on the merits making a later petition challenging the same conviction second or successive.

HOLDINGS

1. A petitioner seeking to file a second or successive § 2254 petition must first obtain authorization from the appropriate court of appeals. Because King had not obtained Ninth Circuit authorization, the district court could not entertain the petition.
2. Dismissal of a § 2254 petition as barred by the statute of limitations constitutes an adjudication on the merits that renders a later petition challenging the same conviction second or successive under § 2244(b).

KEY QUOTATIONS

“The dismissal of a habeas petition as barred by the statute of limitations “constitutes an adjudication on the merits that renders future petitions under § 2254 challenging the same conviction ‘second or successive’ petitions under § 2244(b).”” (at 2)

FACTUAL BACKGROUND

King's petition challenged a Los Angeles County Superior Court criminal case identified as VA091025-01. He had previously challenged the same conviction in a 2009 federal habeas action, which was dismissed with prejudice as untimely. King apparently had not obtained authorization from the Ninth Circuit before filing the present petition.

PROCEDURAL HISTORY

On September 15, 2025, King filed a § 2254 petition challenging Superior Court case number VA091025-01. King had previously filed a habeas petition concerning the same case in the Central District of California in 2009; that petition was denied and dismissed with prejudice as untimely, and judgment was entered on September 29, 2009. The present court concluded that the new petition was second or successive and that King had not obtained the required appellate authorization.

DISPOSITION

dismissed

CASES CITED

- King v. Cate, CV 09-1820-RGK(E) (C.D. Cal. 2009)
- Burton v. Stewart, 549 U.S. 147, 157 (2007)
- Thompson v. Calderon, 151 F.3d 918, 920-21 (9th Cir. 1998), cert. denied, 524 U.S. 965 (1998)

- Calbert v. Marshall, 2008 WL 649798, at *2-4 (C.D. Cal. Mar. 5, 2008)
- McNabb v. Yates, 576 F.3d 1028, 1030 (9th Cir. 2009)

OPINION

Anthony M. King v. Edward Borla, Warden

PER CURIAM.

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3 UNITED STATES DISTRICT COURT

4 CENTRAL DISTRICT OF CALIFORNIA

5

6 ANTHONY M. KING, No. CV 25-8807-RGK(E)

7 Petitioner,

8 v. ORDER OF DISMISSAL

9 EDWARD BORLA, WARDEN,

10 Respondent. 11

12 On September 15, 2025, Petitioner filed a “Petition Under 28 U.S.C. § 2254 for Writ of 13 Habeas Corpus” (“the Petition”). The Petition challenges a Superior Court criminal case, case 14 number VA091025-01 (Petition at 1). Petitioner previously challenged the same Superior 15 Court case in a habeas petition filed in this Court in 2009. See King v. Cate, CV 09-1820- 16 RGK(E) (“the prior habeas action”). The Magistrate Judge in the prior habeas action 17 recommended denial and dismissal of the prior petition with prejudice as untimely. On

18 September 29, 2009, the District Judge filed an order approving and adopting this
19 recommendation. On the same day, this Court entered Judgment in the prior habeas action, 20 denying and dismissing the petition with prejudice. 21 22 The Court must dismiss the present Petition in accordance with 28 U.S.C. section 23 2244(b) (as amended by the “Antiterrorism and Effective Death Penalty Act of 1996”). Section 24 25 2244(b) requires that a petitioner seeking to file a “second or successive” habeas petition first 26 obtain authorization from the Court of Appeals. See Burton v. Stewart, 549 U.S. 147, 157 27 (2007) (where petitioner did not receive authorization from Court of Appeals before filing 1 || mechanism set forth in § 2244(b) requires the permission of the court of appeals before ‘a 2 || second or successive habeas application under § 2254’ may be commenced”). A petition 3 || need not be repetitive to be “second or successive,” within the meaning of 28 U.S.C. section 4 || 2244(b). See, e.g., Thompson v. Calderon, 151 F.3d 918, 920-21 (9th Cir.), cert. denied, 524 5 || U.S. 965 (1998); Calbert v. Marshall, 2008 WL 649798, at *2-4 (C.D. Cal. Mar. 6, 2008). The 6 || dismissal of a habeas petition as barred by the statute of limitations “constitutes an 7 || adjudication on the merits that renders future petitions under § 2254 challenging the same 8 || conviction ‘second or successive’ petitions under § 2244(b).” McNabb v. Yates, 576 F.3d 9 || 1028, 1030 (9th Cir. 2009). Petitioner evidently has not yet obtained authorized from the 10 || Ninth Circuit Court of Appeals. Consequently, this Court

cannot entertain the present Petition. 11 || See *Burton v. Stewart*, 549 U.S. at 157. 12 13 For all of
the foregoing reasons, the Petition is denied and dismissed without prejudice. 14 15 LET
JUDGMENT BE ENTERED ACCORDINGLY. 16 17 DATED: October 3, 2025. 18 j A Rectan
19 UNITED STATES MAGISTRATE JUDGE
20 21 || PRESENTED this 3rd day 22 || of October, 2025, by: 23 54 | _____ __—_—_S_ ____
CHARLES F. EICK
95 || UNITED STATES MAGISTRATE JUDGE
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