

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF  
CALIFORNIA

Clarence A. Gipbsin v. United States, et al.

Gipbsin · No. 2:25-cv-3288-ODW-RAO · Decided April 22, 2025

SUMMARY

The United States District Court for the Central District of California summarily dismissed Clarence A. Gipbsin’s successive petition for a writ of habeas corpus under 28 U.S.C. § 2254. The court held that it lacked jurisdiction because Gipbsin had not obtained authorization from the Ninth Circuit to file a successive petition challenging his 1991 state-court conviction. The dismissal was without prejudice, and the court denied a Certificate of Appealability.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Central District of California                                                                                                                                                                                                                                                                                                |
| WRITING FOR THE COURT | Otis D. Wright II                                                                                                                                                                                                                                                                                                                                                  |
| JURISDICTION          | United States District Court for the Central District of California                                                                                                                                                                                                                                                                                                |
| DECIDED               | April 22, 2025                                                                                                                                                                                                                                                                                                                                                     |
| DOCKET                | 2:25-cv-3288-ODW-RAO                                                                                                                                                                                                                                                                                                                                               |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Petitioner filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his 1991 state-court conviction. The district court summarily dismissed the petition without prejudice for lack of jurisdiction because it was second or successive and had not been authorized by the Ninth Circuit, and denied a certificate of appealability. |
| STANDARD OF REVIEW    | Under Rule 4 of the Rules Governing Section 2254 Cases, a district court may summarily dismiss a habeas petition that plainly shows the petitioner is not entitled to relief. The court may also sua sponte dismiss an unauthorized second or successive petition because the authorization requirement is jurisdictional.                                         |
| PRECEDENTIAL VALUE    | Unpublished district court order; precedential status unknown                                                                                                                                                                                                                                                                                                      |
| PARTIES               | Clarence A. Gipbsin v. United States, et al.                                                                                                                                                                                                                                                                                                                       |

TOPICS

federal habeas corpus

successive petitions

subject matter jurisdiction

post-conviction relief

appellate procedure

## PRACTICE AREAS

federal habeas corpus

post-conviction relief

appellate procedure

## QUESTIONS PRESENTED

1. Whether the petition was a second or successive habeas petition requiring prior authorization from the Ninth Circuit under 28 U.S.C. § 2244(b)(3)(A).
2. Whether the district court had jurisdiction to consider the unauthorized successive petition.
3. Whether petitioner was entitled to a certificate of appealability after the procedural dismissal.

## HOLDINGS

1. A habeas petition challenging the same state conviction previously challenged on the merits in an earlier habeas action is a second or successive petition.
2. A district court lacks jurisdiction to consider a second or successive state habeas petition unless the petitioner first obtains authorization from the appropriate court of appeals.
3. A certificate of appealability should be denied when the petitioner cannot show that reasonable jurists would debate the correctness of the procedural dismissal.

## KEY QUOTATIONS

*“Because Petitioner’s claims in the instant Petition challenge the same 1991 conviction previously challenged on the merits in a prior habeas action, the Court finds that the instant Petition is clearly second or successive.”* (at 3)

*“The Petition is DISMISSED without prejudice for lack of jurisdiction; and”* (at 4)

## FACTUAL BACKGROUND

Petitioner sought federal habeas relief from state custody arising from a 1991 conviction in Los Angeles County Superior Court. He had previously challenged that conviction in several federal habeas proceedings, including petitions dismissed on the merits, as time-barred, or as successive. The present petition challenged the same conviction, and neither the petition nor Ninth Circuit records showed that the Ninth Circuit had authorized its filing.

## PROCEDURAL HISTORY

Gipbsin previously filed multiple federal habeas petitions challenging the same 1991 conviction. His 2013 petition was dismissed as time-barred, and his 2017 and 2018 petitions were dismissed as successive. He filed the present petition without obtaining authorization from the Ninth Circuit, leading the district court to dismiss it without prejudice for lack of jurisdiction.

**DISPOSITION**

dismissed

**CASES CITED**

- Roberts v. Marshall, 627 F.3d 768, 770 n.1 (9th Cir. 2010)
- Burton v. Stewart, 549 U.S. 147, 152-53 (2007)
- Day v. McDonough, 547 U.S. 198, 205-06 (2006)
- Jones v. Davis, 8 F.4th 1027, 1035 (9th Cir. 2021)
- Gonzalez v. Crosby, 545 U.S. 524, 529-530 (2005)
- Felker v. Turpin, 518 U.S. 651, 656-657, 664 (1996)
- Balbuena v. Sullivan, 980 F.3d 619, 634-35 (9th Cir. 2020)
- Miller-El v. Cockrell, 537 U.S. 322, 327 (2003)
- Slack v. McDaniel, 529 U.S. 473, 478 (2000)
- Gipbsin v. L.A. Dist. Att’y, No. 2:18-cv-102 (C.D. Cal. Jan. 22, 2018)
- Gipbsin v. People, No. 2:17-cv-2656 (C.D. Cal. Apr. 28, 2017)
- Gipbsin v. Louis, No. 2:13-cv-3000 (C.D. Cal. June 21, 2013)

**OPINION**

Clarence A. Gipbsin v. United States

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 11 CLARENCE A. GIPBSIN, Case No. 2:25-cv-3288-ODW-RAO 12 Petitioner,

ORDER SUMMARILY DISMISSING

13 v. SUCCESSIVE PETITION FOR WRIT

OF HABEAS CORPUS FOR LACK

14 UNITED STATES, et al., OF JURISDICTION AND DENYING

CERTIFICATE OF APPEALABILITY

15 Respondents. 16

17 I. BACKGROUND

18 On March 27, 2025,1 Petitioner Clarence A. Gipbsin (“Petitioner”), proceeding 19 pro se and  
in forma pauperis, constructively filed a Petition for Writ of Habeas 20 Corpus by a Person in  
State Custody (“Petition”) pursuant to 28 U.S.C. § 2254. 21 Petitioner seeks habeas relief from  
state custody arising from his 1991 conviction in 22 Los Angeles County Superior Court, case no.  
BAO16268-02 (“1991 conviction”). 23 Dkt. No. 1 (“Pet.”) at 2. 24 25 26 1 Under the “mailbox  
rule,” when a pro se prisoner gives prison authorities a pleading to mail, the court deems the

pleading constructively “filed” on the date it is signed. 27 *Roberts v. Marshall*, 627 F.3d 768, 770 n.1 (9th Cir. 2010). The Petition was filed 28 in this Court on April 7, 2025. 1 The records of this Court establish that Petitioner has filed multiple habeas 2 petitions related to his 1991 conviction in this District prior to the instant Petition. 3 Several of these prior petitions were dismissed either on the merits or as second or 4 successive petitions without authorization from the Ninth Circuit. See, e.g., *Gipbsin v. L.A. Dist. Att’y*, Case No. 2:18-cv-102 (C.D. Cal. Jan. 22, 2018) (“2018 Petition”); 6 *Gipbsin v. People*, Case No. 2:17-cv-2656 (C.D. Cal. Apr. 28, 2017) (“2017 7 Petition”); *Gipbsin v. Louis*, Case No. 2:13-cv-3000 (C.D. Cal. June 21, 2013) (“2013 8 Petition”). The Court dismissed with prejudice Petitioner’s 2013 Petition as time 9 barred. See Order Dismissing Habeas Petition as Time-Barred, *Gipbsin v. Louis*, No. 10 2:13-cv-3000 (C.D. Cal. June 21, 2013), ECF No. 12. The Court dismissed the 2017 11 Petition and 2018 Petition as successive. See Order Summarily Dismissing 12 Successive Petition for Writ of Habeas Corpus for Lack of Jurisdiction and Denying 13 Certificate of Appealability, *Gipbsin v. People*, No. 2:17-cv-2656 (C.D. Cal. Apr. 28, 14 2017), ECF No. 5; Order Summarily Dismissing Successive Petition for Writ of 15 Habeas Corpus for Lack of Jurisdiction and Denying Certificate of Appealability 16 *Gipbsin v. L.A. Dist. Att’y*, No. 2:18-cv-102 (C.D. Cal. Jan. 22, 2018), ECF No. 4. 17 A review of the instant Petition demonstrates that Petitioner again seeks federal 18 habeas relief from his state custody arising from his 1991 conviction. Pet. at 2–6. 19 The Petition fails to establish that the Ninth Circuit has authorized Petitioner to bring 20 a successive petition in this Court. For the reasons stated below, the Court dismisses 21 the Petition for lack of jurisdiction.

## 22 II. STANDARD OF REVIEW

23 A district court may rely on the petition and any attached exhibits to dismiss a 24 petition that plainly shows that the petitioner is not entitled to habeas relief. Rule 4, 25 Rules Governing Section 2254 Cases in the United States District Courts. Because 26 a district court’s ability to hear a second or successive petition is jurisdictional, the 27 court may sua sponte dismiss the petition on that ground. See *Burton v. Stewart*, 549 28 U.S. 147, 152–53 (2007); *Day v. McDonough*, 547 U.S. 198, 205–06 (2006).

## 1 III. DISCUSSION

2 Habeas petitions filed after April 24, 1996, are governed by the Antiterrorism 3 and Effective Death Penalty Act (“AEDPA”). *Jones v. Davis*, 8 F.4th 1027, 1035 4 (9th Cir. 2021). The United States Supreme Court has explained: 5 The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) established a stringent set of procedures that a 6 prisoner “in custody pursuant to the judgment of a State 7 court,” 28 U.S.C. § 2254(a), must follow if he wishes to file a “second or successive” habeas corpus application 8 challenging that custody, § 2244(b)(1). In pertinent part, 9 before filing the application in the district court, a prisoner “shall move in the appropriate court of appeals for an order 10 authorizing the district court to consider the application.” 11 § 2244(b)(3) (A). A three-judge panel of the court of appeals may authorize the filing of the second or successive 12 application only if it presents a claim not previously raised 13 that satisfies one of

the two grounds articulated in § 2244(b)(2). § 2244(b)(3)(C); *Gonzalez v. Crosby*, 545 U.S. 524, 529-530, 125 S. Ct. 2641, 162 L. Ed. 2d 480 (2005); see also *Felker v. Turpin*, 518 U.S. 651, 656-657, 664, 116 S. Ct. 2333, 135 L. Ed. 2d 827 (1996). 16 *Burton v. Stewart*, 549 U.S. 147, 152-53 (2007). 18 Because Petitioner's claims in the instant Petition challenge the same 1991 conviction previously challenged on the merits in a prior habeas action, the Court 20 finds that the instant Petition is clearly second or successive. Moreover, the Petition 21 and records of the Ninth Circuit establish that Petitioner has not sought and been 22 granted authorization by the Ninth Circuit to file a successive petition for the purpose 23 of raising his present claims. Petitioner must first seek authorization from the Ninth 24 Circuit to file his petition. *Balbuena v. Sullivan*, 980 F.3d 619, 634-35 (9th Cir. 25 2020). 26 For these reasons, the Court finds that it lacks jurisdiction to consider the 27 Petition. The reference to the Magistrate Judge is therefore vacated, and the Petition 28 is dismissed for lack of jurisdiction. *Burton*, 549 U.S. at 152-53. Any pending 1 motions are denied as moot, and the Clerk is directed to enter judgment dismissing 2 the Petition.

### 3 IV. CERTIFICATE OF APPEALABILITY

4 Under AEDPA, a state prisoner seeking to appeal a district court's final order 5 in a habeas corpus proceeding must obtain a Certificate of Appealability ("COA") 6 from the district judge or a circuit judge. 28 U.S.C. § 2253(c)(1)(A). A COA may 7 issue "only if the applicant has made a substantial showing of the denial of a 8 constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by 9 demonstrating that jurists of reason could disagree with the district court's resolution 10 of his constitutional claims or that jurists could conclude the issues presented are 11 adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). 13 When the Court dismisses a petition on procedural grounds, it must issue a 14 COA if the petitioner shows: (1) "that jurists of reason would find it debatable 15 whether the petition states a valid claim of the denial of a constitutional right"; and 16 (2) "that jurists of reason would find it debatable whether the district court was 17 correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). 18 Here, the Court is dismissing the Petition without prejudice because it is a 19 successive petition without proper authorization from the Ninth Circuit. Since the 20 Petition is patently a successive petition, Petitioner cannot make the requisite 21 showing that jurists of reason would find it debatable whether the district court was 22 correct in its procedural ruling. 23 /// 24 /// 25 /// 26 /// 27 /// 28 ///

### 1] Vv. CONCLUSION

2 Based on the foregoing, IT IS ORDERED THAT: 3 1. The Petition is DISMISSED without prejudice for lack of jurisdiction; and 4 2. A Certificate of Appealability is DENIED. 5 ~ 6 || DATED: April 22, 2025 dyed 7 □

OTIS D. WRIGHT II

8 UNITED STATES DISTRICT JUDGE

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