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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COLVIN MCCRIGHT,

Petitioner - Appellant,

v.

ROBERT HOREL **,

Respondent - Appellee.

No. 07-16869

D.C. No. CV-05-03266-JW

MEMORANDUM *

Appeal from the United States District Court
for the Northern District of California
James Ware, District Judge, Presiding

Submitted June 18, 2008***

Before: REINHARDT, LEAVY, and CLIFTON, Circuit Judges

Colvin McCright, a California state prisoner, appeals pro se the dismissal without prejudice of his habeas corpus petition brought under 28 U.S.C. § 2254.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Robert Horel is substituted for his predecessor, Joe McGrath, as Warden of Pelican Bay State Prison, pursuant to Fed. R. App. P. 43(c)(2).

*** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court concluded that the petition was successive under 28 U.S.C. § 2244(b)(3)(A). We have jurisdiction under 28 U.S.C. § 2253, and we vacate the district court's judgment.

As we determined in denying as unnecessary McCright's application to file a second or successive habeas petition in prior case no. 07-73706, his petition was not successive because it challenged the Board of Prison Terms' decision denying parole in 2003. McCright's prior habeas petitions challenged the legality of his detention pursuant to earlier parole denials. *See* 28 U.S.C. § 2244(b); *Hill v. State of Alaska*, 297 F.3d 895, 898-99 (9th Cir. 2002).

VACATED and REMANDED.