

FEB 19 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STANLEY JOHNSON,

Petitioner - Appellant,

v.

JOHN MARSHALL, Warden,

Respondent - Appellee.

No. 06-56055

D.C. No. CV-06-03839-GAF

MEMORANDUM\*

STANLEY T. JOHNSON,

Petitioner,

v.

JOHN MARSHALL, Warden,

Respondent.

No. 06-73687

Appeal from the United States District Court  
for the Central District of California  
Gary A. Feess, District Judge, Presiding

Submitted January 14, 2008\*\*

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

Before: HALL, O'SCANLAIN and PAEZ, Circuit Judges.

In appeal no. 06-56055, California state prisoner Stanley T. Johnson appeals pro se from the district court's order dismissing his 28 U.S.C. § 2254 petition as second or successive. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

Upon review of the record, we conclude that the district court properly dismissed Johnson's federal habeas petition as second or successive without authorization. See 28 U.S.C. §§ 2244(b)(1)&(2); *Babbitt v. Woodford*, 177 F.3d 744, 745-47 (9th Cir. 1999) (per curiam); cf. *Hill v. Alaska*, 297 F.3d 895, 898 (9th Cir. 2002).

In case no. 06-73687, Johnson has filed an application for authorization to file a second or successive 28 U.S.C. § 2254 petition in district court. This application is denied. Johnson has not made a prima facie showing under 28 U.S.C. § 2244(b)(2) that:

(A) 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 fact finder would have found the applicant guilty of the underlying offense.

No petition for rehearing or motion for reconsideration shall be filed or entertained in this case. *See* 28 U.S.C. § 2244(b)(3)(E).

Appeal no. 06-56055 is **AFFIRMED**.

Case no. 06-73687 is **DENIED**.