

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 16 2009

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

DANIEL STANLEY,)	No. 07-55307
VAN HOOSSEN,)	
)	
Petitioner – Appellant,)	D.C. No. CV-05-00913-SVW
)	
v.)	MEMORANDUM*
)	
M. C. KRAMER,)	
)	
Respondent – Appellee.)	
_____)	

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Argued and Submitted March 3, 2009
Pasadena, California

Before: GOODWIN, FERNANDEZ, and PAEZ, Circuit Judges.

Daniel Stanley Van Hoosen appeals the district court’s dismissal of his petition for habeas corpus relief. See 28 U.S.C. § 2254. We affirm.

The district court determined that the petition was second or successive because Van Hoosen was, for a second time, attempting to overturn his conviction and the first petition had been decided on the merits. We agree that the petition

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

was a second or successive attack on his conviction. Therefore, Van Hoosen was required to obtain an order from this court before he filed that petition. See 28 U.S.C. § 2244(b)(3)(A); Felker v. Turpin, 518 U.S. 651, 657, 116 S. Ct. 2333, 2337, 135 L. Ed. 2d 827 (1996); United States v. Lopez, 534 F.3d 1027, 1033 (9th Cir.), reh'g granted, (Oct. 30, 2008); Cooper v. Calderon, 274 F.3d 1270, 1272–74 (9th Cir. 2001) (per curiam). The requirement that he obtain that order is jurisdictional. See Burton v. Stewart, 549 U.S. 147, 153, 127 S. Ct. 793, 796, 166 L. Ed. 2d 628 (2007) (per curiam). If Van Hoosen believed that new facts had come to light, that was merely a basis for asking us to issue an order authorizing consideration of an application for relief. See 28 U.S.C. § 2244(b)(2), (b)(3)(A). Moreover, he did not point to any other possible exception to the requirement. Cf. Panetti v. Quarterman, ___ U.S. ___, ___, 127 S. Ct. 2842, 2852–55, 168 L. Ed. 2d 662 (2007) (claim of incompetence to be executed that could not have been brought up earlier as a matter of law); Slack v. McDaniel, 529 U.S. 473, 485–86, 120 S. Ct. 1595, 1604–05, 146 L. Ed. 2d 542 (2000) (claim where prior petition not considered on the merits); Hill v. Alaska, 297 F.3d 895, 899 (9th Cir. 2002) (challenge to a later failure to grant a prisoner mandatory parole).¹

AFFIRMED.

¹We decline to consider the issues that Van Hoosen raises for the first time on appeal. See Allen v. Ornoski, 435 F.3d 946, 960 (9th Cir. 2006).