

DEC 14 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARK LEE STINSON,

Petitioner - Appellant,

v.

MIKE KNOWLES; et al.,

Respondents - Appellees.

No. 07-16369

D.C. No. CV-06-00068-FCD

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, District Judge, Presiding

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Mark Lee Stinson appeals from the district court's judgment dismissing his
28 U.S.C. § 2254 petition for lack of jurisdiction. We affirm.

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

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

The district court correctly determined that Stinson's original § 2254 petition, which was dismissed because it was untimely, was disposed of on the merits for purposes of 28 U.S.C. § 2244(b)(3). *McNabb v. Yates*, 576 F.3d 1028, 1029-30 (9th Cir. 2009) (per curiam). As a result, the § 2254 petition that Stinson filed in 2006 was a second or successive petition. *See id* at 1030. Therefore, Stinson was required to obtain authorization from this Court before filing the petition in the district court. *See* 28 U.S.C. § 2244(b)(3). Because Stinson failed to obtain such authorization, the district court properly concluded that it lacked jurisdiction to consider the petition. *See Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th Cir. 2001) (per curiam).

Stinson's request for counsel is denied.

AFFIRMED.