

APR 19 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOE SHERMAN,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>YOLO COUNTY CHIEF PROBATION OFFICER; ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,</p> <p>Respondents - Appellees.</p>

No. 08-17776

D.C. No. 2:07-cv-01645-MCE

MEMORANDUM*

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

Submitted April, 5 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

California state prisoner Joe Sherman appeals pro se from the district court’s judgment dismissing his 28 U.S.C. § 2254 habeas petition. We have jurisdiction pursuant to 28 U.S.C. § 2253, and 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 concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

The district court properly dismissed Sherman's petition as successive because it was his second petition challenging the same condition of his probation, and Sherman had not obtained an order from this Court pursuant to 28 U.S.C. § 2244(b)(3)(A). *See Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th Cir. 2001) (per curiam). Accordingly, we affirm the district court.

We construe Sherman's additional arguments as a motion to expand the certificate of appealability. So construed, the motion is denied. *See* 9th Cir. R. 22-1(e); *see also Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

AFFIRMED.