

FEB 28 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>ROBERT DENNIS PRYCE, AKA Seal A,</p> <p>Defendant - Appellant.</p>
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No. 08-56989

D.C. Nos. 2:06-cv-01571-PA  
2:02-cr-01206-PA-  
001

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Percy Anderson, District Judge, Presiding

Argued and Submitted February 9, 2011  
Pasadena, California

Before: D.W. NELSON, REINHARDT, and N.R. SMITH, Circuit Judges.

Robert Pryce appeals the district court’s dismissal of his 28 U.S.C. § 2255 motion to vacate, set aside, and correct his sentence as a “second or successive” habeas petition. Pryce’s subsequent § 2255 motion constitutes a “second or

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

successive” motion because (1) his initial § 2255 motion was dismissed with prejudice and he failed to pursue his appeal of that dismissal, and (2) his subsequent § 2255 motion in the same matter asserts “claims that were or could have been adjudicated on the merits.” *McNabb v. Yates*, 576 F.3d 1028, 1029 (9th Cir. 2009) (per curiam) (citing *Woods v. Carey*, 525 F.3d 886, 888 (9th Cir. 2008)).

Because Pryce failed to obtain the requisite authorization from “a panel of the . . . court of appeals” under § 2255(h), the district court “never had jurisdiction to consider [Pryce’s second or successive petition] in the first place.” *Burton v. Stewart*, 549 U.S. 147, 152 (2007); *see also* 28 U.S.C. § 2244(b)(3)(a) (“*Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.*”) (emphasis added).

Accordingly, we dismiss for lack of jurisdiction.

**DISMISSED.**