

JUN 24 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>WILSON THOMAS,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>NEIL H. ADLER, Warden,</p> <p>Respondent - Appellee.</p> |
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No. 09-15964

D.C. No. 1:09-cv-00427-LJO

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Lawrence J. O’Neill, District Judge, Presiding

Submitted June 15, 2011\*\*

Before: CANBY, O’SCANNLAIN, and FISHER, Circuit Judges.

Federal prisoner Wilson Thomas appeals pro se from the district court’s judgment dismissing his 28 U.S.C. § 2241 habeas petition. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

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\* 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).

Thomas contends that the district court erred in dismissing his petition on the basis of his previous § 2241 petition, which was dismissed with prejudice.<sup>1</sup> The instant petition, like Thomas's previous petition, asserts that the Bureau of Prisons wrongly denied him credit for time served on his state sentence.

The abuse of the writ doctrine generally “forbids the reconsideration of claims that were or could have been raised in a prior habeas petition.” *Calderon v. United States Dist. Ct. (Kelly)*, 163 F.3d 530, 538 (9th Cir. 1998) (en banc), *overruled on other grounds by Woodward v. Garceau*, 538 U.S. 202 (2003). Thomas has not shown cause for bringing a successive petition, or that a fundamental miscarriage of justice will result from the failure to entertain his claim. *See McCleskey v. Zant*, 499 U.S. 467, 494-95 (1991). Thus, his petition was properly dismissed.

**AFFIRMED.**

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<sup>1</sup> We grant the government's request that we take judicial notice of the documents filed in Thomas's previous action in the United States District Court for the District of Oregon. *See United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).