

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ANDREW TORSTENSON,

Petitioner,

ORDER

v.

07-C-0181-C

STATE OF WISCONSIN DEPARTMENT
OF CORRECTIONS, DIVISION OF
COMMUNITY CORRECTIONS,

Respondent.

Andrew Torstenson, an inmate at the Oshkosh Correctional Institution, has filed a document styled as a “Petition of Custody Placement.” In the petition, petitioner alleges that his confinement at the Oshkosh Correctional Institution is in violation of his constitutional rights because the state department of corrections revoked petitioner’s probation without bringing any new charges. Petitioner asks this court to order the department to transfer him to the Walworth County Jail.

It is plain from the petition that petitioner is not challenging the conditions of his confinement but rather is challenging the fact or duration of his custody. Accordingly, I construe the petition as an application for habeas relief pursuant to 28 U.S.C. § 2254. Savory v. Lyons, 469 F.3d 667, 671 (7th Cir. 2006) (sole avenue open to prisoner challenging fact or duration of confinement, directly or indirectly, is habeas corpus).

From petitioner's affidavit in support of his petition for leave to proceed *in forma pauperis*, I find that he is entitled to proceed without prepayment of the \$5 filing fee. However, the petition must be dismissed because this court is not authorized to consider it. The subject of the petition, the department's revocation of petitioner's parole, was the subject of the petition in 06-C-720-C, making the instant petition a "second or successive habeas corpus application under section 2254." 28 U.S.C. § 2244(b); Harris v. Cotton, 296 F.3d 578, 579 (7th Cir. 2002) (§ 2244(b) applies to all § 2254 petitions, even if petitioner is not challenging judgment of state court pursuant to which petitioner is in state custody). In order to file such an application, petitioner must first seek and obtain permission to do so from the federal court of appeals. Id. Because petitioner has not obtained this authorization, the petition must be dismissed.

ORDER

The petition of Andrew Torstenson for a writ of habeas corpus is DISMISSED pursuant to 28 U.S.C. § 2244(b) as a second or successive petition for which petitioner has failed to obtain permission from the Court of Appeals for the Seventh Circuit.

Entered this 9th day of April, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge