

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

DENNIS LEE HOHOL,

Petitioner,

v.

MICHAEL DITTMAN, Warden,

Respondent.

ORDER

10-cv-822-bbc

Petitioner Dennis Lee Hohol, a prisoner at the Redgranite Correctional Institution, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, in which he challenges convictions he received in 2002 for child sexual assault and child enticement. He has paid the \$5 filing fee.

As petitioner should know, he filed a habeas petition challenging the same convictions in the Eastern District of Wisconsin in 2008. Hohol v. Dittmann, 08-cv-886 (E.D. Wis.). In an order dated April 5, 2010, the court dismissed the petition on the ground that he “never sought review by the Wisconsin Supreme Court and thus, necessarily, procedurally defaulted all claims raised in his present petition.” Id. at dkt. #26, at 3. The court considered and rejected the possibilities that petitioner had cause for failing to seek review in the supreme court and that a failure to consider the claims would result in a fundamental

miscarriage of justice. Id. at 3-4.

Under 28 U.S.C. § 2244(b)(3)(A), a petitioner may not file a second or successive application for habeas relief in the district court unless he first seeks and obtains an order from the appropriate court of appeals authorizing the district court to consider the application. A “second or successive” petition is one in which the prisoner is challenging the same conviction that he challenged in a previous petition that was decided on the merits. In re Page, 179 F.3d 1024, 1025 (7th Cir. 1999). A dismissal for procedural default is a decision on the merits because, in that case, “the [petitioner] has no further opportunity to obtain a disposition on the merits of his or her claims in the state courts.” Henderson v. Lampert, 396 F.3d 1049, 1053 (9th Cir. 2005). Accord Carter v. United States, 150 F.3d 202, 205-06 (2d Cir.1998); Hawkins v. Evans, 64 F.3d 543, 547 (10th Cir. 1995). Because petitioner has not obtained an order from the Court of Appeals for the Seventh Circuit authorizing him to file his petition, I must dismiss it. Nunez v. United States, 96 F.3d 990, 991 (7th Cir. 1996) (“A district court must dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for its filing.”).

ORDER

IT IS ORDERED that the petition of Dennis Lee Hohol for a writ of habeas corpus is DISMISSED WITHOUT PREJUDICE for petitioner's failure to obtain the authorization

required by 28 U.S.C. § 2244(b)(3)(A).

Entered this 24th day of January, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge