

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

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LARRY SPENCER,

Petitioner,

v.

JEFFREY PUGH, Warden,  
Stanley Correctional Institution,

Respondent.

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ORDER

11-cv-09-bbc

Larry Spencer, an inmate at the Stanley Correctional Institution, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment. Petitioner filed the petition after I dismissed several of his claims in a proposed civil action, explaining that his claims challenging the mishandling of his criminal cases could not be raised in a civil action brought under 42 U.S.C. § 1983. Spencer v. Sommers, 10-cv-288-bbc, dkt. #44. In the petition, petitioner challenges the judgments of conviction imposed upon him by the Circuit Court for Dane County on February 2, 2002 in case number 01CF1125 for multiple forgery counts, and on March 4, 2002 in case number 01CF1242,

for drug manufacturing and delivery. As petitioner points out in his petition, these convictions were the subject of a habeas petition filed by petitioner in this court in November 2005, Spencer v. Farrey, 05-cv-666-bbc. This court denied that petition on March 14, 2007. Accordingly, the instant petition is petitioner's second petition challenging his 2002 convictions.

According to 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. Petitioner has not obtained an order from the Court of Appeals for the Seventh Circuit authorizing him to file his petition. Accordingly, this court has no authority to consider petitioner's filing and 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.").

Petitioner has filed two motions for appointment of counsel, dkt. #6 and #9, and a letter requesting proper forms for filing a habeas petition so that he may include all of his challenges to his state convictions. Because I am dismissing his petition, his motions for appointment of counsel will be denied. I will include a form for filing a habeas petition with this order, but as I explained above, petitioner must obtain permission from the court of

appeals before refiling a petition challenging his convictions in case 01CF1125 or 01CF1242.

Petitioner also wrote a letter to the court asking whether his civil case, 10-cv-288-bbc, was still active or whether it had been consolidated with this habeas case. Dkt. #5. Petitioner's civil case has not been consolidated with this case. He filed a proposed third amended complaint in that case that will be screened pursuant to 28 U.S.C. § 1915(e) when the court's calender permits.

#### ORDER

IT IS ORDERED that

1. Petitioner Larry Spencer's motions for appointment of counsel, dkt. #6 and #9, are DENIED.

2. Petitioner's petition for a writ of habeas corpus is DISMISSED WITHOUT PREJUDICE because this court has no authority to consider it.

Entered this 17<sup>th</sup> day of February, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge