

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

RODOSVALDO POZO,

Petitioner,

MEMORANDUM and ORDER

v.

06-C-464-S

WARDEN RICHARD SCHNEITER,

Respondent.

Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 claiming that his 1995 La Crosse County Circuit Court convictions for one count of manufacture or delivery of cocaine base, as a repeat drug offender, and one count of being a dealer in possession of an untaxed controlled substance were unconstitutional. On August 30, 2006 an order to show cause was issued by this Court.

On September 27, 2006 respondent filed a motion for leave to file instant his motion to dismiss the petition for lack of jurisdiction. This motion for leave to file instant will be granted.

Respondent moves to dismiss petitioner's petition for a writ of habeas corpus because it is a successive petition under 28 U.S.C. § 2254 for which the Court lacks jurisdiction. Pursuant to 28 U.S.C. § 2244(b)(3)(A), before a second or successive petition

is filed in the district court, the applicant shall move the appropriate court of appeals for an order authorizing the district court to consider the application. Without said authorization the district court lacks jurisdiction to consider petitioner's successive petition for a writ of habeas corpus. Altman v. Benik, 337 F.3d764, 766(7th Cir. 2003).

Petitioner's petition for a writ of habeas corpus is a successive petition. Accordingly, petitioner's petition must be dismissed because this Court lacks jurisdiction pursuant to 28 U.S.C. § 2244(b) (3) (A).

ORDER

IT IS ORDERED that respondent's motion for leave to file instanter his motion to dismiss is GRANTED.

IT IS FURTHER ORDERED that respondent's motion to dismiss petitioner's petition for a writ of habeas corpus is GRANTED.

IT IS FURTHER ORDERED that petitioner's petition for a writ of habeas corpus is DISMISSED for lack of jurisdiction.

IT IS FURTHER ORDERED that petitioner's motion for an evidentiary hearing is DENIED as moot.

Entered this 28th day of September, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge