

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

DIMITRI HENLEY,

Petitioner,

v.

GARY HAMBLIN and
THE CIRCUIT COURT FOR JEFFERSON COUNTY, WISCONSIN,

Respondents.

ORDER

12-cv-27-bbc

Petitioner Dimitri Henley brought this petition for a writ of habeas corpus under 28 U.S.C. § 2254 to challenge the legality of his conviction for second-degree sexual assault as party to the crime under Wis. Stat. §§ 940.225. He has paid the \$5 filing fee. The petition is before the court for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases.

In his petition, Henley admits that he is bringing a successive petition because, in 2003, he challenged the same conviction in a petition under § 2254 and it was denied on the merits. As the Court of Appeals for the Seventh Circuit has held, a “second or successive conviction is one in which the prisoner is challenging same conviction that he challenged in

a previous petition that was decided on merits. In re Page, 179 F.3d 1024, 1025 (7th Cir. 1999). 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 a panel of the appropriate court of appeals authorizing the district court to consider the application.

In his petition, plaintiff says that he has filed a motion with the court of appeals and that a decision is pending. However, since this petition was filed, the court of appeals issued its decision, denying petitioner's request for permission to file a second or successive petition. Henley v. Hamblin, No. 12-1045 (7th Cir. Jan. 27, 2012). 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 Dimitri Henley for a writ of habeas corpus is DISMISSED for petitioner's failure to obtain the authorization required by 28 U.S.C. §

2244(b)(3)(A). This court has no authority to consider it.

Entered this 19th day of March, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge