

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

CLARENCE E. REED,

Petitioner,

v.

JUDY SMITH, Warden,

Respondent.

ORDER

13-cv-60-bbc

After pleading guilty to delivering cocaine and possessing a firearm as a felon, petitioner Clarence Reed was convicted and sentenced to ten years in prison. State v. Reed, No. 2008CF2337 (Wis. Cir. Ct.). He has now filed this petition for a writ of habeas corpus under 28 U.S.C. § 2254, in which he is raising three claims: (1) “inaccurate information” was used to convict him; (2) the government breached its plea agreement regarding its sentencing recommendation; and (3) trial counsel provided ineffective assistance by failing to object to the breach of the plea agreement. He has paid the \$5 filing fee.

This is the second time plaintiff has filed a petition under § 2254 in which he challenges his conviction in case no. 2008CF2337. In Reed v. Smith, No. 11-cv-345-bbc (W.D. Wis. July 11, 2011), I denied the petition because petitioner had failed to show that

he was in custody in violation of federal law.

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. The petition in this case is a “second or successive” petition because petitioner is challenging the same conviction that he challenged in a previous petition that was denied on the merits. In re Page, 179 F.3d 1024, 1025 (7th Cir. 1999). Although I noted in the order screening the petition that it appeared that petitioner had not exhausted his remedies in state court, I assumed for the purpose of deciding the petition that it did not have any procedural defects and I screened the merits of petitioner’s claims, concluding that they were legally frivolous.

Petitioner has not raised all the same arguments in his new petition, but that is irrelevant under § 2244(b)(3)(A). The question is not whether a petitioner is raising the same claims that he raised in a previous petition but whether he had an opportunity to raise all his claims. Altman v. Benik, 337 F.3d 764, 766 (7th Cir. 2003).

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 Clarence Reed 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 21st day of February, 2013.

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