

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

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DAVID ELIJAH BOWERS, JR.,

Petitioner,

v.

WILLIAM POLLARD,

Respondent.  
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ORDER

13-cv-63-bbc

In this petition for a writ of habeas corpus under 28 U.S.C. § 2254, petitioner David Elijah Bowers, Jr., summarizes his claim in one sentence: “The court put me twice in jeopardy by revoking [a] discharge case 2 years 9 months and 14 days.” In an order dated March 26, 2013, dkt. #10, I noted that the petition seems to be the same as Bowers v. Barton, 10-cv-396-bbc (W.D. Wis.), in which petitioner alleged that, in October 2008, a state court judge purported to revoke his extended supervision for two sentences, even though he had completed serving those sentences. However, I could not be sure that he was challenging the same decision because petitioner provided so little information, so I gave him an opportunity to supplement his petition. In his response petitioner did not directly address the March 26 order, but he filed documents from the Wisconsin Court of Appeals and the Wisconsin Supreme Court regarding the same criminal case that was at issue in case no. 10-cv-396-bbc. Accordingly, I understand petitioner to be acknowledging that he is

challenging the same decision that he challenged in 2010.

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). In case no. 10-cv-396-bbc I dismissed the petition on the ground that petitioner had procedurally defaulted on the claim by failing to fairly present it to the state courts. A dismissal for procedural default is a decision on the merits because, in that situation, “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 David Elijah Bowers, Jr. 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 14th day of May, 2013.

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