

Alan Devon v. Ken Clark

FILED - WESTERN DIVISION  
CLERK, U.S. DISTRICT COURT  
APR 20 2007  
CENTRAL DISTRICT OF CALIFORNIA  
DEPUTY  
BY *[Signature]*

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

ALAN DEVON, )  
 ) No. CV 07-2405-TJH (AGR)  
 )  
 ) Petitioner, )  
 ) OPINION AND ORDER ON PETITION  
 ) FOR WRIT OF HABEAS CORPUS  
 )  
 ) v. )  
 )  
 ) KEN CLARK, )  
 )  
 ) Respondent. )

On April 11, 2007, petitioner Alan Devon, a person in state custody proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in this Court.

I.

**BACKGROUND**

Pursuant to Fed. R. Evid. 201, this Court takes judicial notice of the records in a prior federal habeas corpus action brought by petitioner: *Alan Devon v. C.M. Harrison*, CV 04-06821 RGK (SGL) ("Devon I"). The records in Devon I indicate that on August 16, 2004, Petitioner filed a petition for writ of habeas corpus ("Petition") challenging his conviction for rape, robbery and first degree murder in Los Angeles Superior Court,

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1 case number BA065141. On June 8, 2005, Judgment was entered denying the Petition  
2 on the merits and dismissing the action with prejudice.

3 II.

4 **DISCUSSION**

5 The Petition was filed after enactment of the Antiterrorism and Effective Death  
6 Penalty Act of 1996 ("AEDPA"). Therefore, the Court applies the AEDPA in reviewing  
7 the petition. *Lindh v. Murphy*, 521 U.S. 320, 336, 117 S. Ct. 2059, 138 L. Ed. 2d 481  
8 (1997).

9 The AEDPA provides, in pertinent part, that: "Before a second or successive  
10 application permitted by this section is filed in the district court, the applicant shall move  
11 in the appropriate court of appeals for an order authorizing the district court to consider  
12 the application." 28 U.S.C. § 2244(b)(3)(A). A district court does not have jurisdiction to  
13 consider a "second or successive" petition when the petitioner did not first seek or  
14 obtain authorization to file it from the Court of Appeals. *Burton v. Stewart*, 127 S. Ct.  
15 793, 796, 799, 166 L. Ed. 2d 628 (2007); *Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th  
16 Cir. 2001) ("When the AEDPA is in play, the district court may not, in the absence of  
17 proper authorization from the court of appeals, consider a second or successive habeas  
18 petition.") (citation omitted).

19 Here, the Petition is a second or successive petition that challenges the same  
20 custody imposed by the same judgment of the state court. It plainly appears from the  
21 face of the Petition that Petitioner has not received authorization from the Ninth Circuit  
22 Court of Appeals to file this Petition. This Court must, therefore, dismiss the Petition as  
23 a successive petition for which it lacks jurisdiction under 28 U.S.C. § 2244(b)(3). See  
24 *Burton*, 127 S. Ct. at 796-98.

25 Rule 4 of the Rules Governing Section 2254 Cases in the United States Courts  
26 provides that "[i]f it plainly appears from the face of the petition and any attached  
27 exhibits that the petitioner is not entitled to relief in the district court, the judge must

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1 dismiss the petition and direct the clerk to notify the petitioner." Here, summary  
2 dismissal is warranted.

3 **ORDER**

4 IT IS HEREBY ORDERED that Judgment be entered summarily dismissing the  
5 habeas petition and action for lack of subject matter jurisdiction.

6  
7 Date: 4/18/07

Terry J. Hatter, Jr.  
8 TERRY J. HATTER  
9 UNITED STATES DISTRICT JUDGE

10  
11 Presented By:

12  
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14  
15 DATED: April 13, 2007

Alicia G. Rosenberg  
16 ALICIA G. ROSENBERG  
17 UNITED STATES MAGISTRATE JUDGE  
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