

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

HAROLD RAY WILLIS,

Petitioner,

vs.

Case No. 2:12-cv-344-FtM-29DNF

SECRETARY, DOC and FLORIDA ATTORNEY
GENERAL,

Respondents.

OPINION AND ORDER

This matter comes before the Court upon review of Respondent's Limited Response (Doc. #8, Limited Response) incorporating a Motion to Dismiss Petition as Successive, filed July 14, 2012. Petitioner filed a reply (Doc. #9, Reply) on July 27, 2012. This matter is ripe for review.

Petitioner Harold Ray Willis, proceeding pro se, initiated this action by filing a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. #1, Petition) on June 25, 2012. The Petition challenges Petitioner's 1989 judgment of conviction for sexual battery on a child and two counts of lewd assault on a child, entered in the Twentieth Judicial Circuit Court, Hendry County, Florida. Petition at 1.

Respondents, sua sponte, filed the instant Limited Response, noting that Petitioner had previously filed two § 2254 Petitions in case numbers 2:99-cv-488-FtM-25D and 2:02-cv-574-FtM-29DNF. Limited Response at 2-3. The Court dismissed case number 2:99-cv-

488 with prejudice as time-barred. Id. at 2. The Court dismissed case number 2:03-cv-574 as successive, but allowed Petitioner an opportunity to seek permission from the Eleventh Circuit Court of Appeals to file a successive petition. Id. at 3. Respondent also points out that Petitioner failed to disclose both of his prior federal habeas corpus petitions on the instant Petition. Id. Based on the foregoing, Respondent correctly submits that the instant Petition is successive. In Reply Petitioner does not contest that the instant Petition is successive. Instead, Petitioner claims that he is actually innocent, inter alia. See Reply.

Before a second or successive habeas corpus application is filed in this Court, Petitioner is required to move in the United States Court of Appeals for the Eleventh Circuit for an order authorizing the district court to consider the application. See 28 U.S.C. § 2244(b)(3)(A). For this reason, this case will be dismissed without prejudice to allow Petitioner the opportunity to seek authorization from the Eleventh Circuit Court of Appeals. The Court notes, however, that the dismissal without prejudice does not excuse Petitioner from the one year period of limitation for raising a habeas corpus petition in the federal courts. See 28 U.S.C. § 2244(d).

ACCORDINGLY, it is hereby


ORDERED:

1. Respondent's Limited Response incorporating a Motion to Dismiss as Successive (Doc. #8) is **GRANTED**.

2. This case is **DISMISSED** without prejudice.

3. The **Clerk of the Court** shall terminate any pending, enter judgment accordingly, and close this case.

DONE AND ORDERED in Fort Myers, Florida, on this 10th day of August, 2012.



JOHN E. STEELE
United States District Judge

SA: alj
Copies: All Parties of Record