

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

MARIO ANTHONY ALLEN,)	
)	
Petitioner,)	
)	
v.)	CAUSE NO. 3:08-CV-036 WL
)	
ED BUSS, <i>et al.</i> ,)	
)	
Respondents.)	

OPINION AND ORDER

Mario Anthony Allen, a *pro se* prisoner, filed this third habeas corpus petition attempting to challenge his criminal conviction in 46D01-0306-FB-72 in the LaPorte County Superior Court. This petition was filed in the Southern District of Indiana and then properly transferred to this court. In *Allen v. Buss*, 3:07-cv-163 (N.D.Ind. filed April 6, 2007), Mario Anthony Allen, a *pro se* prisoner, sought to challenge the same conviction he is challenging here. Final judgment was entered in that case on May 2, 2007.

Because this is a second or successive petition, this court lacks jurisdiction to hear this third habeas corpus petition challenging the same conviction. Regardless of whether the claims that Allen is now attempting to present are new or whether they were presented in his previous petition, this petition must be dismissed. "A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." 28 U.S.C. § 2244(b)(1). Therefore any claims previously presented must be dismissed.

Additionally, for any claim not previously presented,

Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

28 U.S.C. § 2244(b)(3). Here, Allen has not obtained an order from the court of appeals permitting him to proceed with any previously unrepresented claims. “A district court must dismiss a second or successive petition . . . unless the court of appeals has given approval for its filing.” *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996) (emphasis in original). Therefore any previously unrepresented claims must also be dismissed.

For the foregoing reasons, this case is **DISMISSED** for want of jurisdiction.

SO ORDERED.

ENTERED: January 22, 2008

s/William C. Lee
William C. Lee, Judge
United States District Court