

CLERK'S OFFICE U.S. DIST. COURT
AT DANVILLE, VA
FILEDIN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

MAR 30 2017

BY: JULIA C. HUDLEY, CLERK
DEPUTY CLERKKEVIN TERRY DOTSON,
Petitioner,Civil Action No. 7:17-cv-00121
Civil Action No. 7:13 -cv-00529

v.

MEMORANDUM OPINIONWARDEN OF KMCC,
Respondent.By: Hon. Jackson L. Kiser
Senior United States District Judge

Kevin Terry Dotson, a Virginia inmate proceeding pro se, recently filed a motion of “extrinsic fraud upon the court” in civil action 7:13-cv-00529. In that action, I had granted respondent’s motion to dismiss and dismissed Petitioner’s petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254.

The instant “extrinsic fraud upon the court” motion does not allege defects in the resolution of his first habeas petition and instead attacks the legality of his state criminal judgment based on facts existing before he filed his first habeas petition. Accordingly, I construe the instant motion as a second or successive petition for a writ of habeas corpus challenging the same state court judgment already challenged in civil action 7:13-cv-00529.

Pursuant to 28 U.S.C. § 2244(b), a federal district court may consider a second or successive § 2254 petition only upon specific certification from a United States Court of Appeals that claims in the subsequent petition meet certain criteria. Because Petitioner has not submitted any evidence that he has obtained such certification from the Court of Appeals for the Fourth Circuit, I must dismiss the petition without prejudice as successive. Based upon the finding that Petitioner has not made the requisite substantial showing of a denial of a constitutional right as required by 28 U.S.C. § 2253(c) and Slack v. McDaniel, 529 U.S. 473, 484 (2000), a certificate of appealability is denied.

ENTER: This 30th day of March, 2017.


Senior United States District Judge