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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

LARRY WAYNE SMITH,	)	CASE NO. 7:17CV00335
	)	
<b>Petitioner,</b>	)	
v.	)	<b>MEMORANDUM OPINION</b>
	)	
<b>HAROLD W. CLARKE,</b>	)	<b>By: Hon. Glen E. Conrad</b>
	)	<b>United States District Judge</b>
<b>Respondent.</b>	)	

Larry Wayne Smith, a Virginia inmate proceeding pro se, filed this action as a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Upon review of Smith's submission, the court concludes that it must be summarily dismissed without prejudice as a successive petition.

Smith challenges the validity of his confinement under a June 2011 judgment of the Lee County Circuit Court under which Smith was convicted of second degree murder and related offenses and sentenced to a total of 53 years in prison. His direct appeals and subsequent state habeas corpus proceedings were unsuccessful.

In 2014, Smith filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 in this court, challenging these same convictions. The court referred the respondent's motion to dismiss to the United States Magistrate Judge, who issued a Report and Recommendation finding that Smith was not entitled to relief under § 2254. The court reviewed the Report and Smith's objections thereto and issued a final order adopting the Report as the opinion of the court, granting the motion to dismiss, and denying habeas relief. Smith v. Dir., Virginia Dep't of Corr., No. 7:14CV00686, 2016 WL 972742 (W.D. Va. Mar. 4, 2016), adopting Smith v. Dir., Virginia Dep't of Corr., No. 7:14CV00686, 2016 WL 950964 (W.D. Va. 2016), appeal dismissed, 657 F. App'x 177 (4th Cir. 2016).

Smith signed and dated his current § 2254 petition on June 22, 2017, and the court received and docketed it on July 17, 2017. Smith seeks habeas relief based on these allegations: the trial court gave constitutionally defective jury instructions; the defense requested but was denied testing for gunshot residue on the firearm and on Smith's forearm injury; the court erred in refusing to admit into evidence a transcript of video evidence the jury viewed during trial; and trial counsel's failure to raise these issues was defective performance. Smith offers no reason that he was prevented from raising these claims in his prior § 2254 petition, and the court finds no such reason. Therefore, the court concludes that Smith's petition is a second or successive one.

Pursuant to 28 U.S.C. § 2244(b), a federal district court may consider a second or successive § 2254 petition, like Smith's current submission, only if the petitioner secures specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the petition meet certain criteria set forth in § 2244(b)(3). Because Smith does not demonstrate that he has obtained such certification, the court must dismiss the petition without prejudice as successive.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to Smith.

ENTER: This 18<sup>th</sup> day of July, 2017.

  
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United States District Judge