

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CEDRIC DALE JOHNSON, #159980,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 2:15-cv-943-WHA
)	
CYNTHIA STEWART, et al.,)	(wo)
)	
Respondents.)	

ORDER

This case is before the court on the Recommendation of the Magistrate Judge (Doc. #4), and the Petitioner’s Objection (Doc. #5). The court has conducted an independent evaluation and *de novo* review of the file in this case and, having done so, concludes that the objection is without merit.

The Magistrate Judge recommended dismissal of Johnson's habeas petition as successive because he filed a prior § 2254 petition, in January 1997, challenging the same 1992 second-degree assault conviction and life sentence (as a habitual offender) that he challenges in the instant petition and has not obtained Eleventh Circuit authorization to file a successive petition. The first § 2254 petition was denied on the merits in October 1997. In his objections, Johnson maintains that his instant petition is not successive because, he says, he had one of his prior felonies (used to sentence him as a habitual offender) set aside after he filed his first § 2254 petition. Even assuming this would constitute a ground excusing him from the requirement of obtaining Eleventh Circuit authorization to file a successive petition, Johnson plainly states in his instant habeas petition that the prior felony conviction in question was set aside in 1993 -- i.e.,

four years before Johnson filed his first § 2254 petition -- which, as noted, was denied on the merits. See Doc. No. 1 at 1-2. Thus, Johnson is incorrect when he now suggests that the alleged vacatur of one of his prior felonies did not exist at the time he filed his first § 2254 petition. It therefore appears that the conviction and sentence Johnson attacks in the instant petition is the same conviction and sentence he attacked in his 1997 petition that was denied on the merits.

Therefore, it is hereby ORDERED as follows:

1. The Recommendation of the Magistrate Judge is ADOPTED.
2. This petition for writ of habeas corpus relief is DENIED.
3. This cause of action is DISMISSED under 28 U.S.C. § 2244(b)(3), because Johnson has failed to obtain the requisite order from the Eleventh Circuit Court of Appeals authorizing this court to consider his successive habeas application.

DONE this 26th day of April, 2016.

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE