

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION**

NOAH MONROE TIDWELL,]	
]	
Petitioner,]	
]	
vs.]	Civil Action No. CV-13-S-612-NW
]	
WARDEN FREDDY BUTLER, <i>et al.</i> ,]	
]	
Respondents.]	

MEMORANDUM OPINION

This is a *habeas corpus* petition. The magistrate judge entered a report and recommendation, recommending that the action be dismissed because it is a successive petition and the petitioner has not obtained the required authorization from the Eleventh Circuit Court of Appeals to file a successive petition in this court. Objections have been filed.

In his objections, the petitioner explains that he is now seeking to raise a new claim that was not presented in his first federal *habeas* petition due to extraordinary circumstances that were beyond his control. *See* doc. no. 7, at 1. He requests that this court issue an “order of authorization for the new petition to be hear[d] before the Honorable Court and a[n] order to show cause why this petition should not be granted.” *Id.* at 3 (alterations supplied).

Title 28 U.S.C. § 2244(b)(3)(A) provides that “[b]efore 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)(A) (alteration and emphasis supplied). This court does not have authority to grant a petitioner permission to file a successive petition. Rather, Tidwell must receive authorization from the Eleventh Circuit Court of Appeals to file a successive petition in this court. Further, he must obtain the necessary authorization to file a successive petition *prior to* filing the successive petition in this court. Because Tidwell has not received authorization from the Eleventh Circuit Court of Appeal to file a successful petition in this court, this court lacks jurisdiction over the petition, and it is due to be dismissed.

The court has considered the entire file in this action, including the report and recommendation and the petitioner’s objections to the report and recommendation, and has reached an independent conclusion that the report and recommendation is due to be adopted and approved.

Accordingly, the court hereby adopts and approves the findings and recommendation of the magistrate judge as the findings and conclusions of the court. This *habeas* petition is due to be dismissed, without prejudice, to allow the petitioner

to obtain authorization from the Eleventh Circuit Court of Appeals to file a successive petition in this court. An appropriate order will be entered separately.

DONE this 30th day of April, 2013.



United States District Judge