

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**EDDIE LEE PATRICK, JR.
ADC # 94049**

PETITIONER

VS. **NO. 5:10CV00035-JLH-BD**

**LARRY NORRIS, Director,
Arkansas Department of Correction**

RESPONDENT

RECOMMENDED DISPOSITION

I. Procedure for Filing Objections

The following recommended disposition has been sent to Chief United States District J. Leon Holmes. Any party may file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date on the Recommended Disposition. A copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

II. Background and Discussion

Petitioner, Eddie Lee Patrick, Jr., is serving a 480-month sentence in the Arkansas Department of Correction (“ADC”) for terroristic threatening and rape. On February 5, 2010, Petitioner filed this pro se petition for a writ of habeas corpus (docket entry #1) under 28 U.S.C. § 2254, claiming he was denied a fair trial and effective assistance of counsel during his April, 2003 trial in the Circuit Court of Jefferson County, Arkansas. (#1 at pp. 5-6)

On October 8, 2009, this Court entered an order dismissing, with prejudice, all of Petitioner’s claims in a petition for writ of habeas corpus he filed on November 5, 2008, challenging the same conviction and sentence he challenges in the instant petition. This Court dismissed the petition on the grounds that all of the claims were barred by the statute of limitations set forth in 28 U.S.C. § 2244(d). See *Patrick v. State of Arkansas*, No. 5:08cv00295-BD (E.D. Ark. filed Nov. 5, 2008).

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts authorizes a district court to summarily dismiss a habeas corpus petition prior to an

answer or other responsive pleading.¹ Summary dismissal is appropriate under Rule 4 where the face of the petition and the court records, of which a federal district court can take judicial notice, indicate that the petition is a second or successive petition filed without authorization from the appropriate court of appeals. *Blackmon v. Armontrout*, 61 Fed.Appx. 985, 985 (8th Cir. 2003).

Before filing a second or successive habeas application in district court under § 2254, a petitioner is required to 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). Without an order from the circuit court authorizing the filing of a second or successive habeas application, a district court does not have jurisdiction to hear the petition. *Burton v. Stewart*, 549 U.S. 147, 153, 157 (2007) (per curiam).

From the face of the instant habeas petition and the court records, it plainly appears that this petition is a second or successive habeas application. Petitioner apparently has not obtained authorization from the Eighth Circuit to file a second or successive habeas petition. Accordingly, this Court lacks jurisdiction to entertain the petition.

¹Rule 4 provides: “The clerk must promptly forward the petition to a judge under the court’s assignment procedure, and the judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.”

III. Conclusion

The Court recommends that the District Court DISMISS Petitioner Eddie Lee Patrick Jr.'s petition for writ of habeas corpus, without prejudice, for lack of jurisdiction, pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

DATED this 26th day of February, 2010.



UNITED STATES MAGISTRATE JUDGE