

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

KELVIN LYNN DAVIS, JR.

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vs.

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No. 5:11CV00074 SWW

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RAY HOBBS, Director,
Arkansas Department of Correction

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Order

Before the Court is a motion to recall Order denying Motion for Relief from Judgment Pursuant to Rule 60(b). The motion is denied.

In 2007, petitioner Kelvin Lynn Davis was convicted of capital murder and sentenced to life imprisonment without the possibility of parole. The appeal of his conviction and sentence was unsuccessful, *see Davis v. State*, 291 S.W.3d 164 (Ark. 2009), and the state trial court denied his subsequent petition for post-conviction relief pursuant to Arkansas Rule of Criminal Procedure 37.

Petitioner filed his first petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in March 2011, alleging ineffective assistance of counsel. The Court denied the petition, finding he procedurally defaulted all his claims for relief. On July 2, 2013, petitioner attempted to challenge his conviction again by filing a Motion for Relief from Judgment Pursuant to Rule 60(b). The Court denied the motion, stating petitioner must follow the procedure set forth in 28 U.S.C. § 2244 in order to file a successive petition. Now petitioner asks the Court to reconsider its order denying his Rule 60(b) motion, arguing that *Sasser v. Hobbs*, 735 F.3d 833 (8th Cir. 2013) may allow him to raise his otherwise procedurally-defaulted claims.

The filing of a second or successive petition is governed by 28 U.S.C. § 2244(b)(3)(A). It provides: “Before 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.” The Court finds petitioner’s motion amounts to a successive collateral attack and should be dismissed for failure to obtain prior authorization from the Court of Appeals. *See Boyd v. United States*, 304 F.3d 813, 814 (8th Cir. 2002).

IT IS THEREFORE ORDERED that petitioner’s motion [ECF No. 42] is denied.

DATED this 12th day of May, 2014.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE