UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

Edgar Tatum, :

Petitioner, :

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v. : CIVIL ACTION NO.

3:15-CV-00330-VLB

Chapdelaine, Warden, :

Respondent. : JUNE 10, 2015

RULING AND ORDER

In a 28 U.S.C. § 2254 petition dated February 17, 2015, Edgar Tatum seeks to challenge his March 1990 state-court conviction for murder. [3:15-cv-00330-VLB, Dkt. 1.] Tatum has already challenged this murder conviction in a prior § 2254 petition. [3:12-cv-01193-WWE, Dkt. 1.] The district court denied his prior § 2254 petition as untimely filed, [id., Dkt. 21]; the Court of Appeals declined to issue a certificate of appealability, [2d. Cir. 13-4560, Dkt. 38]; and the Supreme Court denied Tatum's petition for writ of certiorari on November 10, 2014, *Tatum v. Murphy*, 135 S. Ct. 486 (2014). Tatum's instant § 2254 petition is "successive" because, in addition to attacking the same state-court judgment, the prior § 2254 petition was decided on the merits, *see Murray v. Greiner*, 394 F.3d 78, 80-81 (2d Cir. 2005) (dismissal "as tardy under the controlling statute of limitations . . . constitutes an adjudication on the merits and subjects future challenges . . . to the gatekeeping requirements of § 2244(b)(3)), and the Supreme Court denied

¹ Tatum incorrectly argues that his prior § 2254 petition is not successive because his prior § 2254 was denied as untimely. [3:15-cv-00330-VLB, Dkt. 1 at 54 (.pdf pagination)]. Tatum does not seek reconsideration of the district court's timeliness ruling, the subject of another pending motion filed after the final adjudication of his initial § 2254 petition, [3:12-cv-01193-WWE, Dkt. 28]; rather, all

Tatum's petition for writ of certiorari before he filed his instant § 2254 petition, see *Whab v. United States*, 408 F.3d 116, 120 (2d Cir. 2005).

Before a petitioner may bring a successive habeas petition, he must "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). Because the Court of Appeals has not issued an order authorizing this Court to consider Tatum's instant § 2254 petition, this Court lacks jurisdiction to entertain it. Accordingly, the Clerk is directed to transfer this action, pursuant to 28 U.S.C. § 1631, to the Court of Appeals for the Second Circuit to enable that court to determine whether the petitioner should be permitted to file his instant § 2254 petition in the district court. Further, Tatum's motion to appoint counsel [Dkt. #3] is DENIED as moot. IT IS SO ORDERED.

/s/ Vanessa L. Bryant United States District Judge

Dated at Hartford, Connecticut, June 10, 2015.

of his grounds for relief are predicated on alleged errors occurring during his criminal proceedings or on the state habeas court's resolution of those alleged errors, see *Gonzales v. Crosby*, 545 U.S. 524, 530 (2005) (successive habeas petition seeks relief from state court's judgment of conviction; Rule 60(b) motion

attacks integrity of federal habeas proceedings).

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