

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

GLENN LEE SELDEN,

Petitioner,

v.

Case No: 2:18-cv-138-FtM-99CM

ELIZABETH A. KOVACHEVICH,

Respondent.

OPINION AND ORDER¹

This matter comes before the Court on the Petitioner Glenn Lee Seldon's Petition Under [28 U.S.C. § 2254](#) for Writ of Habeas Corpus by a Person in State Custody ([Doc. 1](#)) filed on February 23, 2018. Although the Petition is virtually unintelligible, it appears that Petitioner moves the Court for immediate release from incarceration. (Doc. #1 at 1). As more fully set forth below, the Court finds the Petition is due to be dismissed.

Petitioner, is an inmate incarcerated within the Florida Department of Corrections ("DOC") at Moore Haven Correctional Facility. Petitioner is serving a fifteen (15) year sentence and various concurrent five (5) years sentences in connection with offenses committed on or about March 22, 2006, for which he was sentenced on August 20, 2007. See Florida Department of Corrections Offender Network, located at www.dc.state.fl.us.

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Rule 4, *Rules Governing Section 2254 Cases in The United States District Courts*, requires both a preliminary review of an application for the writ of habeas corpus and summary dismissal “[i]f it plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the district court. . . .” The Court takes judicial notice that Petitioner has already filed a 28 U.S.C. § 2254 petition challenging the conviction for which he currently is incarcerated. See *Selden v. McNeil*, Case No. 8:10-cv-02259-T-33EAJ (M.D. Fla. 2010). Petitioner has not obtained leave from the Eleventh Circuit Court of Appeals to file a successive petition. See [28 U.S.C. § 2244\(b\)](#); *Rules Governing Section 2254 Cases in The United States District Courts*, R. 9; [Wells v. AG, 470 F. App’x 754, 756 \(11th Cir. 2012\)](#) (district court must dismiss a second or successive petition for a writ of habeas corpus brought under § 2254 for lack of jurisdiction unless the prisoner has obtained an order from the appropriate court of appeals authorizing the district court to consider it). Consequently, this case will be dismissed without prejudice to allow Petitioner the opportunity to seek authorization from the Eleventh Circuit Court of Appeals.

Petitioner should be aware that § 2244(b)(2) limits the circumstances under which the Court of Appeals will authorize the filing of a second or successive habeas corpus petition. Furthermore, [28 U.S.C. § 2244\(d\)](#) imposes a time limitation on the filing of a habeas corpus petition. Petitioner, in seeking relief in the Court of Appeals, should be cognizant of both these provisions.

Accordingly, it is now

ORDERED:

1. This case is hereby **DISMISSED** without prejudice.

2. The **Clerk of Court** is directed to terminate any pending motions, close this case, send Petitioner an “Application for Leave to File a Second or Successive Habeas Corpus Petition [28 U.S.C. § 2244\(b\)](#) By a Prisoner in State Custody” form, and enter judgment accordingly.

DONE and **ORDERED** in Fort Myers, Florida this 9th day of April, 2018.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

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All Parties of Record
SA: FTMP-2