

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

LEVORY W. HICKMON,

Petitioner,

v.

CASE NO. 6:07-cv-1114-Orl-19KRS

SECRETARY, DEPARTMENT
OF CORRECTIONS, et al.,

Respondents.

ORDER OF DISMISSAL

Plaintiff, a prisoner of the State of Florida proceeding *pro se*, initiated this action by filing a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. No. 2) in the United States District Court, Northern District of Florida. Since Petitioner is challenging a conviction out of Seminole County, Florida, the case was transferred to this Court.

On April 25, 2007, Petitioner filed, in this Court, another petition for writ of habeas corpus. *See* Case Number 6:07-cv-716-Orl-18KRS. The instant petition appears to be identical to the petition in case number 6:07-cv-716-Orl-18KRS, the conviction and grounds for relief are the same.

Comity requires that federal courts of equal rank with concurrent jurisdiction exercise care to avoid interfering with each other's affairs. "As between federal district courts, . . . the general principle is to avoid duplicative litigation." *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976)(dictum). In order to avoid

duplicative litigation and piecemeal resolutions, a district court has the discretion to dismiss a suit which can be resolved in an action pending in another district court. *West Gulf Maritime Ass'n. v. ILA Deep Sea Local 24*, 751 F.2d 721, 729 (5th Cir. 1985). Pursuant to the "first-filed" rule, the court first vested with jurisdiction over the common action is the more appropriate body to decide the issues. *Id.* at 729-30; *Merrill Lynch, Pierce, Fenner & Smith v. Haydu*, 675 F.2d 1169, 1174 (11th Cir. 1982) ("In absence of compelling circumstances, the court initially seized of a controversy should be the one to decide the case.").

Since case number 6:07-cv-716-Orl-18KRS, involving the same conviction and grounds for relief, was filed prior to the instant action, this Court will exercise its discretion to dismiss the instant suit.

It is **ORDERED AND ADJUDGED** as follows:

1. This case is **DISMISSED**.
2. Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. No. 3, filed July 2, 2007) is **DENIED**.
3. The Clerk of the Court is directed to close this case.

DONE AND ORDERED at Orlando, Florida this __6th__ day of July, 2007.

A handwritten signature in blue ink that reads "Patricia C. Fawsett". The signature is written in a cursive style and is positioned above a horizontal line.

PATRICIA C. FAWSETT, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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Levory W. Hickmon, Sr.