

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SANTONIO D. RUTH,

Petitioner,

v.

Case No: 6:15-cv-699-Orl-28TBS

SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS
and ATTORNEY GENERAL, STATE OF
FLORIDA,

Respondents.

_____ /

ORDER

This cause is before the Court on initial review of the Petition for Writ of Habeas Corpus (Doc. 1) (the "Petition") filed by Petitioner pursuant to 28 U.S.C. § 2254. For the reasons set forth herein, the Petition is dismissed as a successive petition pursuant to 28 U.S.C. section 2244(b).

I. DISCUSSION

The Court previously denied Petitioner's request for habeas corpus relief under section 2254 with respect to the same conviction/sentence being challenged in the Petition: Case No. 6:05-cv-1901-18DAB, which was dismissed with prejudice on January 3, 2007. Thus, the Petition is a second or successive application.

Pursuant to 28 U.S.C. section 2244(b)(3)(A), the Court cannot consider a second or successive habeas petition until a panel of the Eleventh Circuit Court of Appeals has

authorized its filing. There is no indication that Petitioner applied for and was granted leave to file a second or successive habeas corpus petition by the Eleventh Circuit Court of Appeals. Before Petitioner will be permitted to file a second or successive habeas corpus application in this Court, he must move in the Eleventh Circuit Court of Appeals for an order authorizing this Court to consider the application. *See* 28 U.S.C. § 2244(b)(3)(A).

As a result, under the requirements set forth in section 2244(b), the Petition, which is successive, cannot be entertained by this Court, and it will be dismissed without prejudice to allow Petitioner the opportunity to seek authorization from the Eleventh Circuit Court of Appeals.¹

Petitioner should be aware that section 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, section 2244(d) imposes a time limitation on the filing of a habeas corpus petition.

II. CONCLUSION

Accordingly, it is now **ORDERED AND ADJUDGED** as follows:

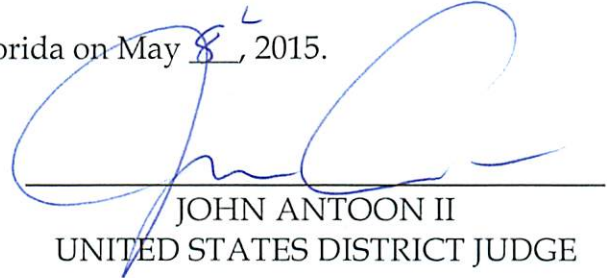
1. This case is **DISMISSED without prejudice**.
2. The Clerk of the Court is directed to enter judgment in favor of Respondents and to close this case.

¹Rule 4 of the Rules Governing Section 2254 Cases In The United States District Courts allows for summary dismissal of a habeas petition that plainly reveals that relief is not warranted.

3. The Clerk of the Court also is directed to 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.

4. All pending motions are **DENIED**.

DONE and **ORDERED** in Orlando, Florida on May 8^L, 2015.



JOHN ANTOON II
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party
OrIP-2 5/4