

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION

EDDIE JAMES TAYLOR,

Petitioner,

v.

CASE NO. 1:09-cv-00129-MP-AK

WALTER A MCNEIL,

Respondent.

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**ORDER**

This matter is before the Court on the Magistrate Judge's Report and Recommendation, Doc. 21, regarding the Petition for Writ of Habeas Corpus filed by Eddie James Taylor, Doc. 1. The Magistrate has recommended that Respondent's Motion to Dismiss, Doc. 17, be granted. Petitioner timely objected, Doc. 22. This Court will review objected-to material *de novo*.

Petitioner was convicted in 1986 of sexual battery upon a child less than 12 years of age, and sentenced to prison. Doc. 17, Ex. A. Petitioner asserts that he is innocent, and that a rape kit containing the victim's DNA would exonerate him. The rape kit was not admitted into evidence at trial, and it was destroyed two months after the trial. Doc. 1, p. 6.

Petitioner has been denied relief under § 2254 as to this conviction. See *Taylor v. Dept. of Corr.*, Case No. 1:91-cv-10030 (N.D. Fla. 1/9/92), Doc. 17 Exh. R. Thus, the instant Petition is successive. In response to the motion to dismiss, Petitioner does not dispute that he previously pursued relief under § 2254, but asserts that he is entitled to pursue this new petition because his conviction was not supported by the evidence. Doc. 20. Pursuant to 28 U.S.C. § 2244(b)(3)(A), this Court cannot consider a second or successive habeas petition until a panel of the Eleventh

Circuit has authorized its filing.

None of the facts that give rise to Petitioner's claim for relief were unknown to him at the time of his previous § 2255 petition. Indeed, it appears Petitioner has raised these precise issues before. As Petitioner alleges no new facts, and the Eleventh Circuit has not authorized this Court to consider the same arguments and facts again, this second or successive petition is unauthorized and this Court may not hear it. Accordingly, it is

**ORDERED AND ADJUDGED:**

1. The Report and Recommendation of the Magistrate Judge, Doc. 21, is ADOPTED and incorporated herein.
2. Respondent's Motion to Dismiss, Doc. 17, is GRANTED.
3. The petition for writ of habeas corpus, Doc. 1, is DISMISSED AS AN UNAUTHORIZED SECOND OR SUCCESSIVE PETITION.

**DONE AND ORDERED** this 29th day of January, 2010

*s/Maurice M. Paul*

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Maurice M. Paul, Senior District Judge