

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

TOMMY SANDERS,

Petitioner

VS.

DAVID FRAZIER, Warden,

Respondent.

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7 : 09-CV-46 (HL)
28 U.S.C. § 2254

RECOMMENDATION

Presently pending in this § 2254 action is the respondent's Motion to Dismiss based on a lack of jurisdiction to entertain a successive petition. The petitioner filed this, his second federal habeas petition, attacking his 1995 Colquitt County convictions for armed robbery, aggravated assault, and possession of a firearm during the commission of a crime. Petitioner's convictions and sentences were affirmed on direct appeal on February 22, 2000. *Sanders v. State*, 530 S.E.2d 203 (2000). On February 17, 2006, the petitioner filed a state habeas petition in the Superior Court of Hancock County. The state habeas court denied relief on April 28, 2008, and collateral review was completed in November 2008. On March 8, 2001, the petitioner filed his first federal habeas petition challenging his Colquitt County convictions. *See Sanders v. Chatman*, 6 : 01-CV-16 (WLS). This court denied relief in an order dated October 16, 2001. Petitioner filed this federal habeas petition in April 2009, again challenging his Colquitt County convictions.

The respondent maintains that the petitioner has failed to obtain authorization from the Eleventh Circuit to proceed with this, his second federal petition for habeas relief challenging his 1995

Colquitt County convictions and sentences. The petitioner does not deny that he did not seek the proper authorization from the Eleventh Circuit before filing this successive petition.

Pursuant to 28 U.S.C. § 2244(b)(3)(A), “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” This portion of the AEDPA has been upheld by the Supreme Court as constitutional. *Felker v. Turpin*, 116 S. Ct. 2333 (1996). Accordingly, it is hereby recommended that this petition be **DISMISSED** as successive. Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable Hugh Lawson, United States District Judge, WITHIN TEN (10) DAYS of receipt thereof.

SO RECOMMENDED, this day of December, 2009.

S/G. MALLON FAIRCLOTH
UNITED STATES MAGISTRATE JUDGE