

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

RAY CHARLES SPIVEY,)	
)	
Petitioner,)	
)	
v.)	Case No. 11-cv-1044
)	
GUY PIERCE, <i>Warden</i> ,)	
)	
Respondent.)	

OPINION & ORDER

Petitioner, Ray Charles Spivey, filed the instant Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2254 on February 7, 2011. (Doc. 1).¹ This Petition is in nearly all respects identical to an Amended Petition that was filed by Petitioner in Case 10-cv-1050, and was recently dismissed by this Court as untimely.² Petitioner filed a Notice of Appeal in that case on February 3, 2011. (Case 10-cv-1050 Doc.23). Section 2244(b)(1) of Title 28 of the United States Code provides that “a claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior 2254 application shall be dismissed.” Accordingly, Petitioner’s Petition for Writ of Habeas Corpus filed in the instant case is DISMISSED. IT IS SO ORDERED.

¹ Petitioner did not pay the \$5.00 filing fee, or submit a Motion for Leave to Proceed in forma pauperis.

² The only difference between the two petitions is that page 6 of the Amended Petition is absent from the instant filing. In fact, the instant Petition is even dated June 17, 2010, which is the exact date that Petitioner filed his Amended Petition in Case 10-cv-1050.

CASE TERMINATED.

Entered this 9th day of February, 2011.

s/ Joe B. McDade

JOE BILLY McDADE
United States Senior District Judge