

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA**

ERIC D. SMITH,)	
)	
Petitioner,)	
)	
v.)	CAUSE NO. 3:07-CV-307 TS
)	
WILLIAM K. WILSON,)	
)	
Respondent.)	

OPINION AND ORDER

Eric D. Smith, a *pro se* prisoner, filed this habeas corpus petition in the Southern District of Indiana attempting to challenge his loss of good time for intimidation in violation of B-213 on February 13, 2004 by the Westville Correctional Facility Disciplinary Hearing Board. Smith previously filed a habeas corpus petition challenging this same conviction in *Smith v. McBride*, 3:04-cv-411 (N.D. Ind. June 16, 2004); final judgment was entered in that case on February 18, 2005. He also challenged this same prison disciplinary proceeding in *Smith v. Wilson*, 3:07-cv-156 (N.D. Ind. filed April 4, 2007); final judgment was entered in that case on April 30, 2007. It is currently pending on appeal in *Smith v. Wilson*, 07-2137 (7th Cir. filed May 15, 2007).

Regardless of whether the claims that Smith is now attempting to present are new or whether they were presented in his previous petitions, this petition must be dismissed. “A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.” 28 U.S.C. § 2244(b)(1). Therefore any claims previously presented must be dismissed.

Additionally, for any claim not previously presented,

Before 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.

28 U.S.C. § 2244(b)(3). Here, Smith has not obtained an order from the court of appeals permitting him to proceed with any previously unrepresented claims. “A district court *must* dismiss a second or successive petition . . . unless the court of appeals has given approval for its filing.” *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996) (emphasis in original). Therefore any previously unrepresented claims must also be dismissed.

For the foregoing reasons, the habeas corpus petition is DISMISSED for want of jurisdiction and the *in forma pauperis* petition is DENIED.

SO ORDERED on July 17, 2007.

 /s/ Theresa L. Springmann
THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT
FORT WAYNE DIVISION