

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

ROBERT A. GADDIE,)	
)	
Petitioner,)	
)	
v.)	CAUSE NO. 3:08-CV-136 WL
)	
SUPERINTENDENT,)	
)	
Respondent.)	

OPINION AND ORDER

Robert A. Gaddie, a *pro se* prisoner, filed this habeas corpus petition attempting to challenge his conviction and twenty year sentence for possession of a firearm by a serious violent felon in the Marion Superior Court under cause number 49G03-0108-CF-174910. The respondent has filed a return stating that this is not the first habeas corpus petition that Mr. Gaddie has filed. In his traverse, Mr. Gaddie agrees he filed *Gaddie v. Cotton*, 1:03-CV-744 (S.D. Ind. filed May 19, 2003), but he argues that it should have been held in abeyance and that this petition need not automatically be dismissed.

Though it is unclear whether he ever sought to have his first habeas petition held in abeyance, it is clear that it was not. Final judgment was entered on February 3, 2004. Mr. Gaddie appealed and the mandate was issued on July 14, 2004. He then petitioned for certiorari which was denied on October 18, 2004.

Mr. Gaddie argues that this petition does not have to be dismissed, but he is wrong because this court does not have jurisdiction to hear an unauthorized successive habeas corpus petition. Regardless of whether the claims that he is now attempting to present are new or whether the were presented in his previous petition, 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). Mr. Gaddie has not been authorized to bring a second or successive petition by the Seventh Circuit. “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.

SO ORDERED.

ENTERED: October 28, 2008

s/William C. Lee
William C. Lee, Judge
United States District Court