

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

RANDY MARVIN SWISHER,)
)
 Petitioner,)
)
 v.)
)
 SUPERINTENDENT, WESTVILLE)
 CORRECTIONAL FACILITY,)
)
 Respondent.)

CAUSE NO.: 3:12-CV-128-TLS

OPINION AND ORDER

On March 15, 2012, the Petitioner, Randy Marvin Swisher, filed a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody [ECF No. 1] challenging his 2008 convictions in the Porter Superior Court for aggravated battery and battery with a deadly weapon. This Court reviewed the Petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases and dismissed it without prejudice for want of jurisdiction because the Petitioner filed a previous petition for writ of habeas corpus challenging the same convictions, which was denied on the merits. (Opinion & Order, ECF No. 6.) The Court advised the Petitioner that if he can obtain leave of the United States Court of Appeals for the Seventh Circuit to file a second or successive habeas corpus application under Section 2254, he may refile his Petition for writ of habeas corpus in this Court. (*Id.* 2.) The Petitioner then filed a Motion to Amend Judgment [ECF No. 8], arguing that his present Petition is not a second or successive petition for writ of habeas corpus. This Court denied that Motion on June 4, 2012. (Opinion & Order, ECF No. 9.)

The Petitioner has now filed a Motion to Amend Original Petition, or Reconsider Filing Habeas Corpus [ECF No. 10], asking that the Court reconsider its determination that his Petition is a second or successive petition. In this Motion, the Petitioner makes essentially the same

arguments that he made in his Motion to Amend Judgment. This Court has already concluded that the Petitioner's argument that the instant petition is not a second or successive petition for writ of habeas corpus is without merit, and the Petitioner's submissions in his Motion to Amend Original Petition present no argument that would justify changing that determination.

Furthermore, as stated in the June 4, 2012, Order, the Petitioner previously elected to proceed in his initial habeas petition although his State collateral review requests were still pending. The Petitioner stated at that time that he understood this would mean he would have to seek leave of the Seventh Circuit before filing another petition, and that leave would likely be denied as he was voluntarily going forward before completion of the State collateral review process.

Accordingly, for the reasons stated in the Court's Orders of May 1 and June 4, 2012, this Court will deny the Petitioner's Motion to Amend Original Petition.

For the foregoing reasons, the Court DENIES the Motion to Amend Original Petition, or Reconsider Filing Habeas Corpus [ECF No. 10].

SO ORDERED on July 2, 2012.

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