

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

KEVIN L. GOVAN,

Petitioner,

v.

WARDEN,

Respondent.

CAUSE NO. 3:20-CV-642-RLM-MGG

OPINION AND ORDER

Kevin L. Govan, a prisoner without a lawyer, filed a habeas corpus petition attempting to challenge his convictions and 40-year sentence by the Allen Superior Court in 02D04-0411-FB-196 on May 25, 2005. This isn't the first time he has brought a habeas corpus petition challenging that conviction. He challenged the same convictions in Govan v. Superintendent, 3:09-CV-547 (N.D. Ind. filed Nov. 20, 2009). That habeas corpus petition was denied on the merits. The U.S. Court of Appeals for the Seventh Circuit denied his request for a certificate of appealability.

"A district court *must* dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for its filing." 28 U.S.C. § 2244(b); Nunez v. United States, 96 F.3d 990, 991 (7th Cir. 1996). Mr. Govan hasn't been authorized to file a successive petition, so this case must be dismissed because the court lacks jurisdiction to hear it.

Mr. Govan knows he can't file a successive habeas corpus petition without permission pursuant to 28 U.S.C. § 2244(b)(3)(A). Mr. Govan filed a habeas corpus petition challenging these same convictions in Govan v. Warden, 3:15-cv-501 (N.D. Ind. filed October 22, 2015). The court dismissed that case as an unauthorized successive petition.

Pursuant to Section 2254 Habeas Corpus Rule 11, the court must consider whether to grant or deny a certificate of appealability. To obtain a certificate of appealability when a petition is dismissed on procedural grounds, the petitioner must show that reasonable jurists would find it debatable (1) whether the court was correct in its procedural ruling and (2) whether the petition states a valid claim for denial of a constitutional right. Slack v. McDaniel, 529 U.S. 473, 484 (2000). There is no basis for finding that jurists of reason would debate the court lacks jurisdiction to consider this habeas corpus petition. Therefore, there is no basis for encouraging Mr. Govan to proceed further, and a certificate of appealability must be denied. For the same reasons, he can't appeal in forma pauperis because an appeal couldn't be taken in good faith.

For these reasons, the court:

- (1) DISMISSES this case for want of jurisdiction;
- (2) DENIES Kevin L. Govan a certificate of appealability pursuant to Section 2254 Habeas Corpus Rule 11;
- (3) DENIES Kevin L. Govan leave to appeal in forma pauperis pursuant to 28 U.S.C. § 1915(a)(3); and
- (4) DIRECTS the clerk to close this case.

SO ORDERED on August 3, 2020

s/ Robert L. Miller, Jr. \_\_\_\_\_  
JUDGE  
UNITED STATES DISTRICT COURT