

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

DAVID PANNELL,)	
)	
Petitioner,)	
)	
vs.)	Case No. 1:15-cv-01524-WTL-DML
)	
RON NEAL, Superintendent,)	
)	
Respondent.)	

**Entry Discussing Petition for Writ of Habeas
Corpus and Denying Certificate of Appealability**

“Subject-matter jurisdiction is the first question in every case, and if the court concludes that it lacks jurisdiction it must proceed no further.” *State of Illinois v. City of Chicago*, 137 F.3d 474, 478 (7th Cir. 1998). The petition of David Pannell for a writ of habeas corpus pursuant to 28 U.S.C. § 2254(a) fails this test and the action must therefore be **dismissed**.

I.

Pannell is a state prisoner who is serving the sentence imposed by a state court following his conviction of murder based on the stabbing death of his wife Leisha. *See Pannell v. State*, 686 N.E.2d 824, 825 (Ind. 1997). Pannell has filed a petition for writ of habeas corpus, seeking his release.

Pannell filed a prior habeas action in this court, docketed as No. 1:12-cv-01301-JMS-DML. The prior habeas action was denied in an Order issued on March 19, 2015. His appeal from that disposition has been docketed as No. 15-2221 and is pending.

Pannell has filed another petition for a writ of habeas corpus in which he asserts claims which were or which could have been presented in the first habeas action. The disposition in No. 1:12-cv-01301-JMS-DML was based on the determination that the amended petition for writ of habeas corpus was barred by the applicable statute of limitations, that in the alternative the claims properly preserved in the state courts did not warrant relief, and that he had committed unexcused procedural default with respect to claims not properly preserved for federal habeas review. *Pannell v. Neal*, No. 1:12-cv-01301-JMS-DML (S.D.Ind. March 19, 2015). The prior habeas action was dismissed with prejudice.

When there has already been a decision on the merits in a federal habeas action, to obtain another round of federal collateral review, a petitioner requires permission from the Court of Appeals under 28 U.S.C. § 2244(b). *See Potts v. United States*, 210 F.3d 770 (7th Cir. 2000). This statute, § 2244(b)(3), "creates a 'gatekeeping' mechanism for the consideration of second or successive [habeas] applications in the district court." *Felker v. Turpin*, 518 U.S. 651, 657 (1996). This statute "is an allocation of subject-matter jurisdiction to the court of appeals." *In re Page*, 170 F.3d 659, 661 (7th Cir. 1999) (quoting *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996)), opinion supplemented on denial of rehearing *en banc*, 179 F.3d 1024 (7th Cir. 1999). "A district court must dismiss a second or successive petition . . . unless the court of appeals has given approval for the filing." *Id.*

With the prior habeas petition having been adjudicated on the merits, and in the absence of authorization for the present filing from the Court of Appeals, this action must now be dismissed for lack of jurisdiction. Pannell's motion to proceed with a new habeas action despite the jurisdictional impediment [dkt 2] is **denied**. Judgment consistent with this Entry shall now issue.

II.

Pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing § 2254 proceedings, and 28 U.S.C. § 2253(c), the court finds that Pannell has failed to show that reasonable jurists would find it “debatable whether [this court] was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The court therefore **denies** a certificate of appealability.

IT IS SO ORDERED.

Date: 10/20/2015

Distribution:

David Pannell
DOC #963265
Indiana State Prison
Inmate Mail/Parcels
One Park Row
Michigan City, IN 46360

A handwritten signature in black ink that reads "William T. Lawrence". The signature is written in a cursive style and is positioned above a horizontal line.

Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana