

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARLOS LAMONT HICKS,

Petitioner,

Civil Action No. 2:17-CV-10947

vs.

HON. BERNARD A. FRIEDMAN

WILLIE SMITH,

Respondent.

**OPINION AND ORDER DISMISSING HABEAS CASE AS DUPLICATIVE, DIRECTING
THAT PETITION BE FILED IN PRIOR CASE,
DENYING A CERTIFICATE OF APPEALABILITY, AND
DENYING LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL**

Prisoner Carlos Hicks has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, contending that he is being held in violation of his constitutional rights. In his pleadings, he challenges his Wayne County Circuit Court convictions for assault with intent to commit murder, Mich. Comp. Laws § 750.83, felon in possession of a firearm, *id.* § 750.224f, and possession of a firearm during the commission of a felony, *id.* § 750.227b, for which he was respectively sentenced to 20 to 48 years imprisonment, a concurrent term of two to five years imprisonment, and a consecutive term of two years imprisonment.

The petitioner has already filed a federal habeas action challenging those convictions and his current incarceration which is pending before another district judge. *See Hicks v. Smith*, Case No. 2:13-CV-11708 (E.D. Mich.) (Zatkoff, J.). In that case, the district judge stayed and administratively closed the case so that the petitioner could exhaust state court remedies as to his habeas claims. Accordingly, the instant action must be dismissed as duplicative and/or successive to his stayed petition. *See, e.g., Flowers v. Trombley*, 2006 WL 724594, *1 (E.D. Mich. March 17, 2006); *Harrington v. Stegall*, 2002 WL 373113, *2 (E.D. Mich.

Feb. 28, 2002); *see also Davis v. United States Parole Comm'n*, 870 F.2d 657, 1989 WL 25837, *1 (6th Cir. March 7, 1989) (district court may dismiss habeas petition as duplicative of pending habeas petition when second petition is essentially same as first petition). The petitioner's pleadings should be submitted in his previously-filed case. The petitioner may not challenge the same convictions in two different habeas actions.

Accordingly,

IT IS ORDERED that this second petition is dismissed and the Court directs the clerk's office to re-file the instant petition in Case No. 2:13-CV-11708. The court makes no determination as to the merits of the petition. This case is closed.

IT IS FURTHER ORDERED that petitioner is denied a certificate of appealability because reasonable jurists could not debate the correctness of the court's procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000).

IT IS FURTHER ORDERED that petitioner is denied leave to proceed *in forma pauperis* on appeal as any appeal from this non-prejudicial dismissal would be frivolous and cannot be taken in good faith. *See Fed. R. App. P. 24(a)*.

s/Bernard A. Friedman
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE

Dated: March 30, 2017
Detroit, Michigan

Certificate of Service

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF system to their respective email or First Class U. S. Mail addresses disclosed on the Notice of Electronic Filing on March 30, 2017.

s/Teresa A. McGovern
Case Manager Generalist