

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

RAPHAEL CLARK,)
)
Petitioner,)
)
v.) No. 4:13CV623 JCH
)
STATE OF MISSOURI,)
)
Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court on petitioner's application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court will summarily dismiss the petition because it is successive.

Petitioner was found guilty by a jury of capital murder. On April 6, 1984, the St. Louis County Circuit Court sentenced petitioner to life without parole plus fifty years' imprisonment, to be served consecutively. Petitioner previously challenged this judgment in the case of Clark v. Henman, 4:92CV140 JCH (E.D. Mo.). The Court dismissed the case because the grounds raised in the petition were either non-cognizable or procedurally barred. Following dismissal, the United States Court of Appeals for the Eighth Circuit denied petitioner's application for a certificate of probable cause to appeal. Petitioner now seeks to challenge the same state court judgment.

Rule 4 of the Rules Governing § 2254 Cases provides that a district court shall summarily dismiss a § 2254 petition if it plainly appears that the petitioner is not entitled to relief.

To the extent that petitioner seeks to relitigate claims that he brought in his original petition, those claims must be dismissed pursuant to 28 U.S.C. § 2244(b)(1). To the extent that petitioner seeks to bring new claims for habeas relief, petitioner must obtain leave from the United States Court of Appeals for the Eighth Circuit before he can bring those claims in this Court. 28 U.S.C. § 2244(b)(3)(A). Petitioner has not been granted leave to file a successive habeas petition in this Court. And the AEDPA's restriction on filing successive petitions is retroactively applicable to cases that were filed before the AEDPA was enacted. See, e.g., Daniels v. United States, 254 F.3d 1180, 1188 (10th Cir. 2001). As a result, the petition will be summarily dismissed.

Accordingly,

IT IS HEREBY ORDERED that petitioner's motion for leave to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that petitioner's motion for leave to file a brief in excess length [Doc. #3] is **GRANTED**.

IT IS FURTHER ORDERED that petitioner's application for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DISMISSED** without prejudice.

IT IS FURTHER ORDERED petitioner's motion for appointment of counsel [Doc. #4] is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that petitioner's motion to amend his "motion to recall the mandate," filed with the Missouri Court of Appeals on October 13, 2010 [Doc. #5] is **DENIED** as this Court is without jurisdiction to so order.

IT IS FURTHER ORDERED that no certificate of appealability will issue.

An Order of Dismissal will accompany this Memorandum and Order.

Dated this 23rd day of July, 2013.

/s/Jean C. Hamilton
JEAN C. HAMILTON
UNITED STATES DISTRICT JUDGE