UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ANTHONY C. MORRIS,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 4:13CV2299 TIA
	)	
JEFF NORMAN,	)	
	)	
Respondent.	)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court upon the application of Anthony C. Morris for leave to commence this action without payment of the required filing fee. Upon consideration of the financial information provided with the application, the Court finds that petitioner is financially unable to pay any portion of the filing fee, and therefore, his motion will be granted.

Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254.[1] Petitioner is challenging the constitutionality of his April 24, 1981 capital murder conviction in the Circuit Court of the City of St. Louis, Missouri. Petitioner previously brought a § 2254 petition for a writ of habeas corpus challenging his 1981 conviction, and that he was denied relief, both in the district court and on appeal. *See Morris v. Delo*, No. 4:90-CV-643(C)(1) (E.D. Mo.).

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[1] The Court notes that petitioner filed this action as a motion for relief from judgment under Rule 60(b)(6). However, because plaintiff challenges the constitutional validity of a state criminal judgment, the Court construes the action as a petition for writ of habeas corpus under 28 U.S.C. § 2254. *E.g.*, *Gonzalez v. Crosby*, 545 U.S. 524 (2005).

Title 28 U.S.C. § 2244(b)(3)(A) provides that "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." There is no indication that the Court of Appeals has certified the instant habeas application as required by § 2244(b)(3)(A), and thus, this Court lacks jurisdiction, and the action will be summarily dismissed without prejudice. *See* 28 U.S.C. § 2254, Rule 4.

Therefore,

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

IT IS FURTHER ORDERED that no order to show cause shall issue as to the respondent, because the instant petition is successive under 28 U.S.C. § 2244(b)(3)(A).

IT IS FURTHER ORDERED that petitioner's application for a writ of habeas corpus is **DENIED**.

IT IS FURTHER ORDERED that petitioner's motion for an evidentiary hearing [Doc. #2] is **DENIED** as moot.

A separate Order of Dismissal will be filed contemporaneously.

Dated this 25th day of November, 2013.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE