

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

MAURICE RONALD ARCHER,

Petitioner,

vs.

DAVID BERKEBILE, et al.,

Respondents.

CV-15-51-GF-BMM

ORDER

Petitioner Maurice Archer (Archer) is a state prisoner proceeding pro se. Archer has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. The petition alleges due process violations during his 2007 criminal proceedings, prosecutorial misconduct during the criminal trial, ineffective assistance of trial counsel, ineffective assistance of appellate counsel, and bias by the trial court. (Doc. 1). The present petition is the second petition filed by Archer in this Court challenging his 2007 state conviction. Archer filed his first petition in 2009. *See Archer v. Mahoney*, CV 09-73-BU-SEH-RKS. The 2009 petition was dismissed with prejudice.

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on July 14, 2015. (Doc. 4). Judge Johnston recommended that the present petition be dismissed for lack of jurisdiction because Archer had not obtained leave from the Ninth Circuit Court of Appeals to file a

successive habeas petition. (Doc. 4 at 6-7). Archer filed objections to Judge Johnston's Findings and Recommendations on August 3, 2015. (Doc. 5).

The Court has fully considered Archer's objections and has reviewed de novo Judge Johnston's Findings and Recommendations. 28 U.S.C. § 636(b)(1). The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full. Archer must seek leave from the Ninth Circuit Court of Appeals to file a second or successive petition. 28 U.S.C. § 2244(b)(3)(A). This Court lacks jurisdiction to hear Archer's claims until leave is granted by the Ninth Circuit. *Burton v. Stewart*, 549 U.S. 147, 149 (2007).

Accordingly, IT IS ORDERED:

1. The Petition for Writ of Habeas Corpus (Doc. 1) is DISMISSED for lack of jurisdiction.
2. A Certificate of Appealability is DENIED as this Court lacks jurisdiction to consider the unauthorized second petition for writ of habeas corpus.
3. The Clerk is directed to enter judgment accordingly.

DATED this 31st day of August, 2015.



Brian Morris
United States District Court Judge