

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARVEL JONES,)	8:08CV543
)	
Petitioner,)	
)	
v.)	
)	
THE STATE OF NEBRASKA, THE)	MEMORANDUM
NEBRASKA ATTORNEY)	AND ORDER
GENERAL’S OFFICE, and THE)	
LANCASTER COUNTY)	
ATTORNEY’S OFFICE,)	
)	
Respondents.)	

Petitioner, Marvel Jones, filed his Petition for a Writ of Mandamus on December 24, 2008. (Filing No. [1](#).) Also pending before the court is Petitioner’s Motion for Leave to Proceed in forma pauperis. (Filing No. [2](#).)

I. Petitioner’s Pending Motion

Petitioner originally sought to proceed in forma pauperis. (Filing No. [2](#).) However, on January 23, 2008, the court determined that Petitioner could not proceed in forma pauperis because he had filed three or more prior actions that were frivolous, malicious, or failed to state a claim upon which relief may be granted, in violation of [28 U.S.C. § 1915\(g\)](#). (Filing No. [6](#).) Accordingly, the court ordered Petitioner to show cause why this matter should not be dismissed pursuant to [28 U.S.C. § 1915\(g\)](#), or alternatively to pay the full \$350.00 filing fee. (*Id.* at CM/ECF pp. 1-2.) Petitioner paid the full \$350.00 filing fee on February 4, 2009. (*See* Docket Sheet). Thus, Petitioner’s Motion for Leave to Proceed in forma pauperis (filing no. [2](#)) is denied as moot.

II. Petitioner's Writ of Mandamus

Jones filed his Petition for a Writ of Mandamus on December 24, 2008, against the State of Nebraska, the Nebraska Attorney General's Office and the Lancaster County Attorney's Office. (Filing No. 1.) Jones alleges that he is currently confined as an inmate in the Nebraska Department of Corrections. (*Id.* At CM/ECF p. 1.) Condensed and summarized, Jones alleges that his current confinement is unlawful because his conviction was obtained by an unlawful jury trial. (*Id.* at CM/ECF p. 1.) Jones asks the court to order the State of Nebraska to release him "from confinement immediately." (*Id.* at CM/ECF p. 11.)

Jones clearly seeks judicial review of his state court conviction. The appropriate avenue for Jones to challenge his state court conviction is through a writ of habeas corpus. [28 U.S.C. § 2254](#); see also [Preiser v. Rodriguez, 411 U.S. 475, 487-88 \(1973\)](#). However, Jones has already pursued, and been denied, habeas corpus relief from his conviction by this court.¹ (Filing No. 1 at CM/ECF pp. 3-4.) In addition, Jones unsuccessfully requested permission to file a second or successive habeas corpus petition with the Eighth Circuit Court of Appeals in both May 2003 and November 2008. (*Id.* at CM/ECF pp. 17-18.) Given this history, Jones' current Petition for Writ of Mandamus could be perceived as frivolous attempt to make an end run around the rules regarding second and successive habeas petitions. See [28 U.S.C. § 2244](#). However, the court will give Jones the benefit of the doubt and assume that he captioned his Petition as a Writ of Mandamus by mistake, rather than as an attempt to avoid the requirements of [28 U.S.C. § 2244](#). As such, and for the reasons stated above, Jones' Petition for Writ of Mandamus is dismissed without prejudice.

¹On April 27, 2000, the court denied and dismissed Petitioner's January 2000 Petition for Writ of Habeas Corpus with prejudice. (Case No. 4:00CV3002, Filing Nos. 13 and 14.)

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Leave to Proceed in forma pauperis (filing no. [2](#)) is denied as moot.

2. Petitioner's Writ of Mandamus is (filing no. [1](#)) is dismissed without prejudice.

3. A separate judgment will be entered in accordance with this Memorandum and Order.

March 6, 2009.

BY THE COURT:

s/Richard G. Kopf
United States District Judge