

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MARVEL JONES,

)

CASE NO. 8:14CV1

)

Petitioner,

)

v.

)

**MEMORANDUM
AND ORDER**

)

BRIAN GAGE,

)

)

Respondent.

)

This matter is before the court on Petitioner's Objection (Filing No. [13](#)) to the court's denial of his petition for writ of habeas corpus. On January 8, 2014, the court determined that the petition for writ of habeas corpus was a second or successive petition under 28 U.S.C. § 2244 because it challenged the same conviction and sentence already challenged in this court. (See Filing No. [10](#).) Petitioner argues that the court should not have dismissed his petition as successive without first considering "whether the interests of justice would be better served by addressing the merits of the petition." (Filing No. [13 at CM/ECF p. 1](#).) However, Section 2244 states that "[b]efore a second or successive [petition for writ of habeas corpus] 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." [28 U.S.C. § 2244\(b\)\(3\)\(A\)](#). Section 2244 is written in mandatory terms ("shall"), leaving no discretion to the district court. As such, Petitioner's Objection will be overruled.

IT IS THEREFORE ORDERED that: Petitioner's Objection (Filing No. [13](#)) is overruled.

DATED this 17th day of April, 2014.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

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