

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
CESAR STAPLETON,

Petitioner,

-against-

S. KICKBUSH,

Respondent.  
-----X

ANN M. DONNELLY, United States District Judge:

NOT FOR PUBLICATION

MEMORANDUM  
AND ORDER

16-cv-5004 (AMD)

**FILED**  
IN CLERK'S OFFICE  
US DISTRICT COURT E.D.N.Y.

★ SEP 26 2016 ★

BROOKLYN OFFICE

On September 7, 2016, the petitioner, Cesar Stapleton, appearing *pro se*, filed this petition for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 challenging his 1991 Kings County conviction for two counts of assault. On September 13, 2016, the petitioner paid the filing fee to commence this action. As set forth below, I do not have jurisdiction to consider the petition, because it is the petitioner's second habeas challenge to the same conviction. Accordingly, the Clerk of Court is respectfully directed to transfer the petition to the United States Court of Appeals for the Second Circuit.

The petitioner previously challenged this conviction by filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. *See Stapleton v. Greiner*, No. 98-CV-1971 (RR) (Docket Entry No. 2.) By Memorandum and Order dated December 20, 2000, the Honorable Reena Raggi denied the petition on the merits. (*See* Docket 98-CR-1971, Docket Entry No. 51.) On June 20, 2001, the United States Court of Appeals for the Second Circuit dismissed the petitioner's appeal. (*See* Docket 98-CV-1971, Docket Entry No. 65, Mandate No. 01-2063.)

The Antiterrorism and Effective Death Penalty Act of 1996 "allocates jurisdiction to the courts of appeals, not the district courts, to authorize successive habeas motions or applications." *Torres v. Senkowski*, 316 F.3d 147, 151 (2d Cir. 2003).

Because this is the petitioner's second attempt to challenge the same conviction, this Court lacks jurisdiction to address the petition on the merits, and is required to transfer it to the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 1631. *Torres*, 316 F.3d at 151-52 (citing *Liriano v. United States*, 95 F.3d 119 (2d Cir. 1996) (*per curiam*)). Therefore, the petitioner must move in the United States Court of Appeals for the Second Circuit for permission to pursue this successive petition for habeas corpus relief. 28 U.S.C. § 2244(b)(3)(A).

**CONCLUSION**

Accordingly, in the interest of justice, the Clerk of Court shall transfer this petition to the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 1631. If the Circuit authorizes the petitioner to proceed in this matter, the petitioner shall move to reopen under this docket number. The Clerk of Court shall close ~~this case~~.

**SO ORDERED.**

s/Ann M. Donnelly

ANN M. DONNELLY  
United States District Judge

Dated: Brooklyn, New York  
September 26, 2016