

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

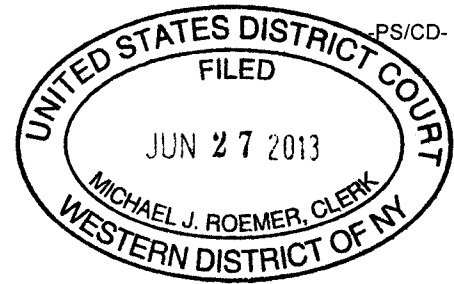
JAMES E. FOX,

Petitioner,

-v-

PROBATION OFFICER PETE SIGLER,

Respondent.



DECISION AND ORDER
13-CV-6281Fe

The petitioner, James E. Fox, acting *pro se*, seeks relief pursuant to 28 U.S.C. § 2254, alleging that his convictions in County Court, Ontario County, State of New York, on September 21, 1992 and February 21, 2007 were unconstitutionally obtained, as set forth more precisely in the petition. Petitioner has requested *in forma pauperis* status. Petitioner's request to proceed as a poor person is granted.


Petitioner may not challenge two convictions in one petition. Rules Governing Section 2254 Cases in the United States District Courts, Rule 2(e). For that reason, the challenge to the 2007 conviction is severed from this action and the Court Clerk is directed to open a new habeas action for petitioner to challenge the second conviction in 2007.

As to the remaining challenge to the 1992 conviction, petitioner has challenged this conviction more than once in this Court in 06-CV-6234Fe, 03-CV-

6026Fe and 03-CV-6602Fe, making this a successive petition over which this Court has no jurisdiction without the authorization of the Court of Appeals to file it. According to 28 U.S.C. § 2244, before a district court may entertain a second or successive application for a writ of habeas corpus filed pursuant to § 2254, the petitioner must have first requested and obtained an order from the appropriate court of appeals which authorizes the filing of such a second or successive petition. The petition herein has not been so authorized. Therefore, in the interests of justice and pursuant to 28 U.S.C. § 1631, this petition shall be transferred to the Second Circuit Court of Appeals for a determination of the authorization issue. See *Liriano v. United States of America*, 95 F.3d 119 (1996).

IT HEREBY IS ORDERED, that the petitioner's § 2254 petition challenging the 1992 conviction in Ontario County is transferred to the Second Circuit Court of Appeals. The Court Clerk is directed to open a new habeas action for petitioner to challenge the second conviction in 2007.

IT IS SO ORDERED.



HONORABLE RICHARD J. ARCARA
DISTRICT COURT

Dated:

June 25, 2013