

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

FILED

FEB 14 2012

WILLIAM J. GUTHRIE Clerk, U.S. District Court

KEW Deputy Clerk

DONALD LEE DUNCAN, )
Petitioner, )
v. )
STATE OF OKLAHOMA, )
Respondent. )

Case No. CIV 11-212-RAW-KEW

OPINION AND ORDER

This action is before the court on the respondent's motion to dismiss petitioner's petition for a writ of habeas corpus as barred by the statute of limitations. Petitioner, an inmate in the custody of the Oklahoma Department of Corrections, attacks his sentences in Okmulgee County District Court Case No. HCF-2005-5003 for four counts of Lewd or Indecent Proposal or Act to a Child Under 16 and one count of Rape by Instrumentation.

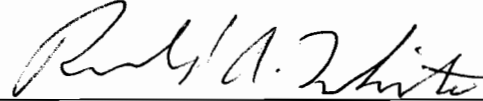
The respondent alleges the petition was filed beyond the one-year statute of limitations imposed by the Antiterrorism and Effective Death Penalty Act of 1996, codified at 28 U.S.C. § 2244(d). A review of the record, however, indicates petitioner previously challenged these convictions and sentences in a federal habeas corpus petition filed on April 9, 2009, and that action was dismissed as barred by the statute of limitations on March 4, 2010. Duncan v. Mullins, No. 09-188-RAW-KEW (E.D. Okla. Mar. 4, 2010).

When a second or successive § 2254 . . . claim is filed in the district court without the required authorization from [the circuit court of appeals], the district court may transfer the matter to [the circuit] court if it determines it is in the interest of justice to do so under § 1631, or it may dismiss the motion or petition for lack of jurisdiction.

In re Cline, 531 F.3d 1249, 1252 (10th Cir. 2008) (citations omitted). See also Phillips v. Seiter, 173 F.3d 609, 610 (7th Cir. 1999) (noting that it is a waste of judicial resources to require the transfer of frivolous, time-barred cases). Because petitioner has failed to obtain authorization from the Tenth Circuit Court of Appeals to file a second or successive § 2254 petition, this action is dismissed for lack of jurisdiction.

**ACCORDINGLY**, this action is **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.

**IT IS SO ORDERED** this 14<sup>th</sup> day of February 2012.



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**RONALD A. WHITE**  
**UNITED STATES DISTRICT JUDGE**