



from filing a 28 U.S.C. §2254 habeas if that litigant had at least one prior 28 U.S.C. §2254 habeas that was dismissed with prejudice. For purposes of the second or successive rule, the concept of ‘dismissal with prejudice’ means either:

1. that the prior case was dismissed after merits consideration and denial on the merits; or,
2. that the prior case was dismissed on grounds of procedural default;<sup>1</sup> or,
3. that the prior case was dismissed on grounds of AEDPA’s statute of limitations.

Villot v. Varner, 373 F.3d 327 (3d Cir. 2004); Holloway v. Horn, 355 F.3d 707 (3d Cir. 2004); Jones v. Morton, 195 F.3d 153 (3d Cir. 1999); Hull v. Kyler, 190 F.3d 88 (3d Cir. 1999); Christy v. Horn, 115 F.3d 201 (3d Cir. 1997). AEDPA provides in relevant part that before such a second or successive petition is filed in the district court, the prisoner must first get permission to file in the district court from the circuit court, pursuant to 28 U.S.C. §2244(b)(3)(A), and that without such circuit permission, the district court lacks subject matter jurisdiction to consider such a habeas petition. Villot v. Varner, 373 F.3d 327 (3d Cir. 2004); Holloway v. Horn, 355 F.3d 707 (3d Cir. 2004); Jones v. Morton, 195 F.3d 153 (3d Cir. 1999); Hull v. Kyler, 190 F.3d 88 (3d Cir. 1999); In re Minarik, 166 F.3d 591 (3d Cir. 1999); Christy v. Horn, 115 F.3d 201 (3d Cir. 1997). The strict requirements announced in AEDPA’s second or successive rule were intentionally enacted in order to support the Congressional policy of creating finality with respect to

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<sup>1</sup>Procedural default occurs when a §2254 petitioner in this district court previously had the right to file an appeal of the conviction and/or sentence involved to a state court, or the right to file an application for post-conviction relief the conviction and/or sentence involved to a state court, concerning specific issues, but the petitioner did not, in fact, file such an appeal or application, and some procedural rule of the state court dictates that the time has passed for such a state filing.

state and federal criminal prosecutions that involve federal constitutional issues.

Woodford v. Garceau, 538 U.S. 202 (2003); Duncan v. Walker, 533 U.S. 167 (2001);

Crews v. Horn, 360 F.3d 146 (3<sup>rd</sup> Cir. 2004).

On May 24, 2007, petitioner filed the above-captioned petition in this court seeking Habeas Corpus relief pursuant to 28 U.S.C. §2254. Petitioner has filed a previous petition in this court pursuant to 28 U.S.C. §2254, labeled 00-cv-5880, which attacked the same conviction and/or sentence, and which was dismissed as time barred, which, as previously stated, acts as a dismissal with prejudice; accordingly, the second or successive rule is triggered in this matter.

\_\_\_\_\_ He has applied for in forma pauperis status but has \$155.40 in his prison account.

Accordingly, this

Day of June, 2007, it is hereby

**ORDERED** as follows:

1. Petitioner is granted provisional leave to proceed in forma pauperis for the purpose of this order only.
2. This civil action is **DISMISSED WITHOUT PREJUDICE** on the grounds that this court lacks subject matter jurisdiction over it.
3. The Clerk of the United States District Court for the Eastern District of Pennsylvania shall mark this matter as **CLOSED** in this court for all purposes, including statistics.

s\ Berle M. Schiller  
**BERLE M. SCHILLER, U.S. District Judge**

