

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ROBERT JOHNSON,	:	
Petitioner,	:	
	:	1:17-cv-0068
v.	:	
	:	Hon. John E. Jones III
WARDEN WINGARD, THE	:	
DISTRICT ATTORNEY OF THE	:	
COUNTY OF DAUPHIN, PA	:	
STATE ATTORNEY GENERAL,	:	
Respondents.	:	

MEMORANDUM

July 18, 2017

Robert Johnson (“Johnson”), a Pennsylvania state inmate, initially filed the instant Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Eastern District of Pennsylvania on November 23, 2016. (Doc. 1). The petition was transferred to this Court on January 11, 2017, pursuant to 28 U.S.C. §2241(d). (Docs. 3, 6).

Following review of the petition, Respondents’ response and exhibits (Doc. 17), and Petitioner’s traverse (Doc. 18), it is concluded that this Court lacks jurisdiction over the petition. Consequently, the petition will be dismissed.

I. BACKGROUND

On January 17, 2003, and August 8, 2003, two separate juries convicted Johnson of three counts of Criminal Attempt Homicide, three counts of Aggravated assault, Possession with Intent to Deliver a Controlled Substance, Carrying a Firearm Without a License, Theft by Unlawful Taking, five counts of Recklessly Endangering Another Person, two counts of Flight to Avoid Apprehension, two counts of Resisting Arrest, Possessing Instruments of Crime, and False Reports, in the Court of Common Pleas of Dauphin County, Pennsylvania, Criminal docket numbers “0654-2002, 0655-2002.”¹ (Doc. 1, p. 1; Doc. 17, pp. 1, 2). He challenges these convictions and sentence in his present § 2254 petition.

This Court previously entertained a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, filed by Johnson in 2007, challenging the same convictions and sentence he seeks to challenge in his present petition. *Johnson v. Shaw*, M.D.Pa. No. 4:07-cv-0369. A lengthy Memorandum and Order issued denying that petition, *in toto*, on the grounds that Johnson’s properly exhausted claims were meritless and the remaining claims were unexhausted and

¹ Respondents indicate that “[a]t the conclusion of Johnson’s January 2003 trial, the jury convicted Johnson of ten counts and acquitted him of six counts. The jury deadlocked regarding the remaining counts and a mistrial was declared. The Commonwealth re-tried Johnson on the remaining counts in August 2003.” (Doc. 17, p. 2, n. 1).

procedurally defaulted. *Johnson v. Shaw*, No. 4:07-cv-0369, 2011 WL1085781 (M.D.Pa. March 2011). A Certificate of Appealability was denied. *Id.*

Respondents seek dismissal of the present petition based on Johnson’s failure to obtain authorization from the United States Court of Appeals for the Third Circuit to file a second or successive petition.² (Doc. 17, p.7).

II. DISCUSSION

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) establishes a stringent set of procedures that a prisoner “in custody pursuant to the judgment of a State court,” must follow if he wishes to file a “second or successive” habeas corpus application challenging that custody. 28 U.S.C. §§ 2245(a), 2244(b)(1), (2). Before filing the application in the district court, a prisoner “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). “A three-judge panel of the court of appeals may authorize the filing of the second or successive application only if it presents a claim not previously raised that satisfies one of the two grounds articulated in § 2244(b)(2). § 2244(b)(3)(C); *Gonzalez v. Crosby*, 545 U.S. 524, 529-530, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005); *see also Felker v. Turpin*, 518 U.S. 651, 656-657, 664, 116 S.Ct. 2333, 135 L.Ed.2d 827

² Respondents alternatively seek dismissal of the petition as untimely and “procedurally defaulted and/or meritless.” (Doc. 17, p. 17).

(1996).” *Burton v. Stewart*, 549 U.S. 147, 153 (2007). If a petitioner erroneously files a second or successive habeas petition in a district court without first obtaining permission from the court of appeals, “the district court’s only option is to dismiss the petition or transfer it to the court of appeals pursuant to 28 U.S.C. § 1631.” *Robinson v. Johnson*, 313 F.3d 128, 139 (3d Cir. 2002).

As noted *supra*, in a prior application for writ of habeas corpus, this Court passed on the legality of the very convictions and sentence Johnson seeks to challenge in his present petition. As a result, under the AEDPA, he is required to receive authorization from the Court of Appeals before pursuing his second challenge. The record is clear that Petitioner has not obtained leave from the Court of Appeals for the Third Circuit prior to filing the present petition. Because he did not do so, this Court is without jurisdiction to entertain it. *See Burton v. Stewart*, 549 U.S. 147, 153 (2007) (where a state prisoner filed a second or successive habeas petition, and “did not seek or obtain authorization to file in the District Court, the District Court never had jurisdiction to consider it in the first place.”).

III. CONCLUSION

Based on the foregoing, the petition will be dismissed pursuant to 28 U.S.C. § 2244(b)(3) for lack of jurisdiction.

An appropriate Order will issue.