

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

ASATA D. LOWE,

Petitioner,

v.

No.: 3:13-cv-403
(VARLAN/SHIRLEY)

DAVID SEXTON, Warden,

Respondent.

MEMORANDUM AND ORDER

This is a petition for the writ of habeas corpus. Petitioner's application to proceed *in forma pauperis* is **GRANTED**. For the reasons stated below, the respondent shall not be required to file an answer or other pleading to the petition and this petition is **DISMISSED WITH PREJUDICE**.

Petitioner was convicted in the Circuit Court for Blount County, Tennessee, of two counts of first degree premeditated murder and one count of especially aggravated robbery. He previously filed a § 2254 petition in this Court attacking the same convictions; the previous petition was denied on the merits. *Asata D. Lowe v. James Fortner, Warden*, Civil Action No. 3:08-cv-489 (E.D. Tenn. March 23, 2010) (Judgment Order).

In accordance with the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), effective April 24, 1996, the petitioner cannot file a second or successive habeas corpus petition in the district court until he has moved in the United States Court of Appeals

for the Sixth Circuit for an order authorizing the district court to consider the petition. This Court has not received an order from the Sixth Circuit authorizing the court to consider the pending petition.

The Court notes that petitioner has filed numerous successive habeas corpus petitions. *See, e.g., Lowe v. Westbrook*, Civil Action No. 3:11-cv-80 (E.D. Tenn. Feb. 23, 2011) (Order transferring action to United States Court of Appeals for the Sixth Circuit as a second or successive habeas corpus petition), *appeal dismissed*, No. 11-5242 (6th Cir. March 15, 2011) (order granting motion to voluntarily dismiss appeal); *Lowe v. Westbrook*, Civil Action No. 3:11-cv-134 (E.D. Tenn. March 22, 2011) (Order transferring action to United States Court of Appeals for the Sixth Circuit as a second or successive habeas corpus petition), *appeal dismissed*, No. 11-5349 (6th Cir. May 5, 2011) (order dismissing action for lack of prosecution). The Sixth Circuit has refused petitioner's request to file a second or successive petition. *See In re: Asata D. Lowe*, No. 13-5161 (6th Cir. July 3, 2013) (order denying petitioner's motion for authorization to file a second or successive habeas petition).

Under the circumstances, the petition for the writ of habeas corpus IS **DENIED** as a second or successive petition and this action IS **DISMISSED WITH PREJUDICE**. A certificate of appealability **SHALL NOT ISSUE** in this action. 28 U.S.C. § 2253(c).

In addition to the above, this Court has carefully reviewed this case pursuant to 28 U.S.C. § 1915(a) and hereby **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, this Court **DENIES** the

petitioner leave to proceed *in forma pauperis* on appeal. See Rule 24 of the Federal Rules of Appellate Procedure.

ENTER :

s/ Thomas A. Varlan _____
CHIEF UNITED STATES DISTRICT JUDGE