

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

BRANDON LAKEITH MONTGOMERY, §
§
Petitioner, §
§
v. §
§
LORIE DAVIS, Director, §
Texas Department of Criminal Justice, §
Correctional Institutions Division, §
§
Respondent. §

Civil Action No. 7:17-CV-133-O

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND DISMISSING PETITION**

After making an independent review of the pleadings, files, and records in this case, and of the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, I am of the opinion that the findings of fact and conclusions of law set forth in the Magistrate Judge’s Recommendation are correct and they are hereby adopted and incorporated by reference as the Findings of the Court.

As stated by the Magistrate Judge, when a petition is second or successive, the petitioner must seek an order from the United States Court of Appeals for the Fifth Circuit that authorizes this Court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A). Because the instant petition is successive, the district court is without authority to entertain the petition unless leave to file is granted by the Court of Appeals.

28 U.S.C. § 2244(b)(1) states:

A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

Review of Petitioner's previous habeas application reflects that the instant petition is an exact duplicate of the previously-filed petition. *See Montgomery v. Davis*, No. 7:17-CV-051-O (N.D. Tex. 2017) (petition denied by judgment entered July 28, 2017 - no appeal). The grounds for relief set forth in the instant petition are identical to the grounds raised by Petitioner in his previous petition. Therefore, the instant petition is subject to dismissal.

For the foregoing reasons, this action is **DISMISSED** as successive, but without prejudice to Petitioner's right to seek leave to file a successive petition from the United States Court of Appeals for the Fifth Circuit.

SO ORDERED this **20th day of October, 2017**.


Reed O'Connor
UNITED STATES DISTRICT JUDGE