

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GERALD ALLEN PERRY,	§	
TDCJ-CID NO. 644896,	§	
Petitioner,	§	
v.	§	CIVIL ACTION NO. H-11-2954
	§	
KENNETH HOYT,	§	
Respondent.	§	

OPINION ON DISMISSAL

On August 11, 2011, petitioner Gerald Allen Perry, a state inmate proceeding *pro se*, filed a petition for writ of mandamus seeking a hearing on the merits of his federal habeas petition in *Perry v. Johnson*, Civil Action No.H-97-0894 (S.D. Tex. 1998). On October 5, 2011, the Fifth Circuit Court of Appeals denied petitioner’s petition for a writ of mandamus, in which he sought the same relief, and imposed a monetary sanction against him. *In re Perry*, No.11-20591 (5th Cir. 2011). Given his litigious history, the Court of Appeals also barred petitioner from filing appeals or initial pleadings in the court of appeals or in any court subject to the jurisdiction of the Fifth Circuit “challenging the 1993 conviction for aggravated robbery or the district court’s 1998 denial of habeas corpus relief, no matter how styled, without first obtaining leave of the court in which he seeks to file such a challenge.” *Id.* The Court of Appeals warned of additional and progressively more severe sanctions if he continued to file frivolous challenges to his conviction or the denial of habeas relief. *Id.* The Fifth Circuit’s decision in *Ex parte Perry* forecloses the exercise of subject matter jurisdiction over the present, malicious petition for mandamus relief.

To the extent that petitioner’s pleading is more properly construed as a petition for writ of habeas corpus, the Court finds that it is successive and filed without permission from

the Fifth Circuit Court of Appeals as required by 28 U.S.C. § 2244(b)(3)(A). Consequently, this Court lacks subject matter jurisdiction to consider petitioner's application for a writ of habeas corpus.

Whether construed as a petition for federal habeas corpus relief under 28 U.S.C. § 2254 or a petition for writ of mandamus, the present petition is DENIED. Petitioner's application to proceed *in forma pauperis* is also DENIED and all other pending motions, if any, are DENIED. A certificate of appealability shall not issue from this decision.

It is so ORDERED.

SIGNED at Houston, Texas, this 13th day of December, 2011.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE