

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT DANVILLE, VA
FILED
for Roanoke
MAY 11 2009
JOHN F. CORCORAN, CLERK
BY: *[Signature]*
DEPUTY CLERK

JOHN POWHATAN KIRBY, JR.,
Petitioner,

Civil Action No. 7:09-cv-00157

v.

MEMORANDUM OPINION

GENE M. JOHNSON,
Respondent.

By: **Hon. Jackson L. Kiser**
Senior United States District Judge

The petitioner, a Virginia inmate proceeding pro se, has submitted to the court this petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254. However, court records indicate that the petitioner has previously filed a § 2254 petition concerning the same conviction, Civil Action No. 7:04-cv-00579. Thus, the petitioner's current petition is a subsequent one, falling under the prohibition against second or successive petition in 28 U.S.C. § 2244(b). Pursuant to this section, a federal district court may consider a second or successive § 2254 petition only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the petition meet certain criteria. § 2244(b). Because the petitioner has not submitted any evidence that he has obtained such certification by the Court of Appeals, the court will dismiss the petition without prejudice as successive.

The Clerk is directed to send copies of this memorandum opinion and the accompanying order to the petitioner.

ENTER: This 11th day of May, 2009.

[Signature]
Senior United States District Judge