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AUG 26 2009

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

RONALD FONTANES,)	
Petitioner,)	Civil Action No. 7:09-cv-00355
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
COMMONWEALTH OF VIRGINIA,)	By: Hon. James C. Turk
Respondent.)	Senior United States District Judge

Ronald Fontanes, a Virginia inmate proceeding pro se, filed a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254. However, court records indicate that the petitioner previously filed a § 2254 petition concerning the same conviction, Fontanes v. True, Civil Action No. 1:04-cv-00043 (E.D. Va. Oct. 26, 2004) (appeal dismissed 129 Fed. App'x. 41 (4th Cir. 2005)). Thus, the petitioner's current petition is a subsequent one, falling under the prohibition in 28 U.S.C. § 2244(b) against a second or successive petition. 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 26th day of August, 2009.

[Signature]
Senior United States District Judge