

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

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

NOV 25 2009

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MICHAEL ISIAH LAWRENCE,)
Petitioner,)

Civil Action No. 7:09-cv-000459

v.)

MEMORANDUM OPINION

WARDEN S.K. YOUNG,)
Respondent.)

**By: Hon. James C. Turk
Senior United States District Judge**

Petitioner Michael Isiah Lawrence, a Virginia inmate proceeding pro se, filed a motion seeking post-conviction DNA testing to challenge his Virginia criminal conviction that the court construes as 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, Lawrence v. Young, No. 7:02-cv-00027 (W.D. Va.) (affirmed 51 Fed. App'x 419 (2002)). 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. 28 U.S.C. § 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 25th day of November, 2009.

James C. Turk
Senior United States District Judge

*A Fourth Circuit form and instructions for filing a request for certification to file a subsequent petition are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.