

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

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|--------------------------------------|---|---|
| SEAN SALLACE EARL, |) | |
| Petitioner, |) | Civil Action No. 7:22cv00139 |
| |) | |
| v. |) | |
| |) | By: Michael F. Urbanski |
| HAROLD W. CLARKE,¹ |) | Chief United States District Judge |
| Respondent. |) | |

OPINION AND ORDER

Sean Sallace Earl, a Virginia inmate proceeding pro se, filed this petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, on or about March 8, 2022, and received by the Clerk on March 14, 2022, challenging the judgment order against him, entered September 17, 2019, by the Augusta County Circuit Court, and imposing an active sentence of 28 years and 24 months. Earl previously filed a habeas petition, pursuant to § 2254, on or about February 20, 2022, and received by the Clerk on March 1, 2022, challenging the same convictions. The grounds raised in this petition are identical to the grounds raised in the earlier petition, and the relief sought is exactly the same. Accordingly, for the reasons set forth below, the court will dismiss this petition as successive.

Under 28 U.S.C. § 2244(b), a federal court must dismiss a second or subsequent habeas petition challenging a conviction except in limited circumstances. This rule applies whether the successive petition raises the same claims as the first petition or raises new claims. 28 U.S.C. § (b)(1)-(2). Further, the petitioner must move for and receive authorization from the

¹ Earl named the “Commonwealth of Virginia” as the respondent in this petition, but the proper respondent to a § 2254 petition is the petitioner’s custodian. Rule 2(a), Rules Gov. § 2254 Cases. In this case, because Earl is in the custody of the Virginia Department of Corrections, the proper respondent is its director, Harold W. Clarke. The Clerk is directed to update the docket accordingly.

appropriate circuit court of appeals before filing a second or subsequent petition. 28 U.S.C. § 2244(b)(3)(A). Because the current petition raises the same issues presented in the prior petition (not yet ruled upon by the court), § 2244(b)(1) requires that it “shall be dismissed.” Id.

Accordingly, it is hereby **ORDERED** that Earl’s § 2254 petition in this case² is **DISMISSED** as successive, and this action is **STRICKEN** from the active docket of the court.

Further, finding that Earl has failed to make a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability is **DENIED**.

The Clerk shall send a copy of this opinion and order to Earl.

ENTER: This 7th day of April, 2022.



Michael F. Urbanski
Chief U.S. District Judge
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Michael F. Urbanski
Chief United States District Judge

² This order does not apply to the earlier case, No. 7:22cv00111, which remains pending.