

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ANTHONY L. DAVIS,

Petitioner,

v.

CASE NO. 12-3142-SAC

DAVID MCKUNE,

Respondent.

O R D E R

This matter comes before the court on a form petition for filing under 28 U.S.C. § 2254, submitted by a prisoner incarcerated in a Kansas correctional facility. Petitioner proceeds pro se, and seeks leave to proceed in forma pauperis under 28 U.S.C. § 1915.

Petitioner is serving a sentence imposed for his 1989 conviction on charges of first degree felony murder, aggravated robbery, and aggravated arson. The instant petition includes various grounds challenging the legality of that conviction and sentence.¹ Court records disclose, however, that the court dismissed as time barred petitioner's first attempt to seek federal habeas corpus of his conviction and sentence.² And in more recent cases including one dismissed this same date, the court dismissed petitioner's habeas actions as second or successive petitions that lacked the circuit

¹ The petition appears to set forth a variety of additional concerns appropriate for filing in a civil complaint seeking relief under 42 U.S.C. § 1983. The court does not address any such claim because petitioner may not avoid the "3-strike" provision in 28 U.S.C. § 1915(g) by attempting to proceed on such claims in habeas corpus. Additionally, petitioner alleges error in a decision entered in a previous federal civil action, *Davis v. Clark*, Case No. 05-3172-SAC, but the remedy on any such allegation must be pursued in that case to the extent the law now allows.

² See *Davis v. McKune*, Case No. 03-3078-SAC (D.Kan. December 3, 2003), appeal dismissed (10th Cir. July 21, 2004).

court's authorization for this court's review.³ See 28 U.S.C. § 2244(b).

Likewise, the present case also presents a second or successive habeas petition, for which authorization from the Tenth Circuit Court of Appeals is required before this court can consider the petition. Absent such authorization, this matter is subject to being dismissed for lack of jurisdiction, or transferred to the Tenth Circuit Court of Appeals if such transfer would be in the interest of justice. See *In re. Cline*, 531 F.3d 1249, 1252-54 (10th Cir.2008).

The court continues to find it would not be in the interests of justice to transfer this matter to the Circuit Court for such authorization, and concludes the petition should be dismissed for lack of jurisdiction.

IT IS THEREFORE ORDERED that petitioner's motion for leave to proceed in forma pauperis (Doc. 2) is provisionally granted for the limited purpose of dismissing the petition for lack of jurisdiction.

IT IS SO ORDERED.

DATED: This 6th day of July 2012 at Topeka, Kansas.

s/ Sam A. Crow

SAM A. CROW
U.S. Senior District Judge

³ See *Davis v. Parkinson*, Case No. 10-3136-SAC (D.Kan. September 22, 2010), appeal dismissed (10th Cir. November 11, 2010); *Davis v. McKune*, Case No. 12-3117-SAC (D.Kan. July *, 2012).