

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

SALEEM EL-AMIN,

Petitioner,

v.

CASE NO. 19-3150-JWL

N.C. ENGLISH,
Warden, USP-Leavenworth,

Respondent.

MEMORANDUM AND ORDER

This matter is a petition for habeas corpus filed under 28 U.S.C. § 2254. Petitioner, a District of Columbia offender incarcerated at the United State Penitentiary-Leavenworth, challenges his conviction in the District of Columbia Superior Court of armed robbery and assault with a dangerous weapon.

This is the second petition filed by petitioner concerning his District of Columbia conviction. The Court denied relief on the merits in his first petition under § 2254 in *El-Amin v. English*, Case No. 18-3264-JWL. That matter is on appeal.

Discussion

Under 28 U.S.C. § 2244(b)(2), “[t]he filing of a second or successive § 2254 application is tightly constrained[.]” *Case v. Hatch*, 731 F.3d 1015, 1026 (10th Cir. 2013). Before a district court may consider a second or successive petition, the petitioner first must seek authorization in the appropriate court of appeals. See 28 U.S.C. § 2244(b)(3)(A). Until the court of appeals authorizes the petition, the district court does not have jurisdiction to address the merits. *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008).

Petitioner does not suggest that he has obtained the necessary authorization.

The Court also must consider whether this petition should be dismissed or transferred to the court of appeals. Under 28 U.S.C. §1631, transfer is appropriate when it is in the "interests of justice." In this case, petitioner's claims were considered in his first petition on the merits, and the record does not suggest that any unusual circumstances warrant transfer. Accordingly, the Court will dismiss this matter for lack of jurisdiction. This dismissal is without prejudice to refile if petitioner obtains authorization to proceed from the Tenth Circuit Court of Appeals.

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motion for leave to proceed in forma pauperis (Doc. 2) is granted.

IT IS FURTHER ORDERED petitioner's motion for evidentiary hearing (Doc. 3) is denied.

IT IS FURTHER ORDERED this matter is dismissed for lack of jurisdiction. No certificate of appealability will issue.

IT IS SO ORDERED.

DATED: This 13th day of August, 2019, at Kansas City, Kansas.

S/ John W. Lungstrum
JOHN W. LUNGSTRUM
U.S. District Judge