

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

NOBLE LEROY JOHNSON,

Petitioner,

v.

CASE NO. 21-3135-SAC

(fnu) PETERSON,

Respondent.

ORDER OF DISMISSAL

This matter is before the court on a petition for habeas corpus filed under 28 U.S.C. § 2254. Petitioner proceeds pro se.

The Court has examined the petition under Rule 4 of the Rules Governing Habeas Corpus and finds the present petition is a second or successive application for relief.

**Background**

Petitioner challenges his conviction in the District Court of Butler County, Kansas, in Case No. 1975-CR-8872. That conviction was the subject of an earlier habeas corpus petition filed in this court in Case No. 97-3269-DES. The court dismissed that matter, and the decision was affirmed on appeal. *Johnson v. McKune*, 288 F.3d 1187 (10<sup>th</sup> Cir. 2002).

**Analysis**

This matter is governed by the Antiterrorism and Effective Death Penalty Act (AEDPA). Under 28 U.S.C. § 2244(b), enacted as part of the AEDPA, "the filing of a second or successive § 2254 application is tightly constrained[]." *Case v. Hatch*, 731 F.3d 1015, 1026 (10<sup>th</sup> Cir. 2013). "Before a court can consider a second claim,

an applicant must first 'move in the appropriate court of appeals for an order authorizing the district court to consider the application.'" *Id.* (quoting 28 U.S.C. §2244 (b)(3)(A)). "Section 2244's gate-keeping requirements are jurisdictional in nature and must be considered prior to the merits of a § 2254 petition." *Id.* at 1027 (citing *Panetti v. Quarterman*, 551 U.S. 930, 942-47 (2007)); see also *In re Cline*, 531 F.3d 1249, 1251 (10<sup>th</sup> Cir. 2008) ("A district court does not have jurisdiction to address the merits of a second or successive ... § 2254 claim until this court has granted the required authorization.").

Where, as here, a petitioner presents a successive petition without the prior authorization required by statute, the district court may consider whether the matter should be transferred to the court of appeals under 28 U.S.C. § 1631, rather than dismissed, if the transfer would be in the interest of justice. See *In re Cline*, 531 F.3d at 1252.

Because the petition does not clearly show the nature of petitioner's challenge based on actual innocence, the court concludes the present matter should be dismissed rather than transferred. The dismissal of this matter does not prevent petitioner from personally seeking authorization from the Tenth Circuit.

Finally, because this matter is dismissed for lack of jurisdiction, the Court declines to enter a certificate of appealability.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is dismissed as a second or successive application for habeas corpus. No certificate of appealability will issue.

**IT IS SO ORDERED.**

DATED: This 2d day of June, 2021, at Topeka, Kansas.

S/ Sam A. Crow  
SAM A. CROW  
U.S. Senior District Judge