ATTACHMENTS = EE

ITEMS	PAGES
1) Petition for a Writ of Habeas Corpus Under 28 U.S.C § 2241 FILED — 8 Apr. 2018 USDC# 4:16-CV-00177-CDL-MSH	22
2) USDC SOUTHERN DISTRICT OF GA. ORDER — 16 May 2016 # 5:16-CV-27	4
3) USDC MIDDLE DISTRICT OF GA. APPLICATION TO PROCEED IN DIST. COURT WITHOUT PREPAYING FEES OR COSTS (SHORT FORM) 26 May 2016	2
4) USDC M D OF GA AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IFP 26 May 2016	7
5) USDC M D OF GA JUDGEMENT — 1st July 2016 # 4:16-CV-177 (CDL) ORDER — 1st July 2016	4
6) LETTERS TO US COURT OF APPEALS 11TH CIRCUIT # 16-14926-F WITH: MOTION FOR PERMISSION TO APPEAL IFP AND AFFIDAVIT US COA 11TH CIR	2 11
7) CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT # 16-14926-F 21 Oct. 2016	4

ATTACHMENT = EE (CONTINUES)

ITEM	PAGES
8) USDC MD OF GA APPLICATION TO PROCEED IN DIST. COURT WITH OUT PREPAYING FEES OR COSTS (SHORT FORM) 3ª ORIGINAL HAND COPY — 9 NOV. 2016	2
9) LETTER FROM US COURT OF APPEALS 11TH CIR. — 3 NOV. 2016 ORDER — FILED — 3 NOV. 2016 #16-14926-F	6
10) EXTRAORDINARY — PETITIONER MOVES COURT OF APPEALS FOR EVIDENTIARY HEARING (AFFIDAVIT OF TRUTH) #16-14926-F SENT OUT — 16 Jan. 2018	15

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-14926-F

DANIEL A. SPOTTSVILLE,
a.k.a. Daniel Andrew Spottsville,
a.k.a. Daniel Andre Spottsville,

Petitioner-Appellant,

versus

STATE OF GEORGIA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Georgia

ORDER:

Daniel Spottsville is a Georgia prisoner serving a total 30-year sentence for various convictions in Marion County and Muscogee County, Georgia. Mr. Spottsville filed his first *pro se* 28 U.S.C. § 2254 petition challenging the Marion County conviction in 2003, which the district court dismissed as untimely. Mr. Spottsville filed his first *pro se* § 2254 petition challenging the Muscogee County conviction in 2004, which the district court also dismissed as untimely.

In April 2016, Mr. Spottsville filed the present *pro se* § 2254 petition, raising various claims related to his convictions and sentences in Marion and Muscogee Counties. The district court dismissed Mr. Spottsville's § 2254 petition as successive, noting that it did not have jurisdiction to rule on the § 2254 petition, as Mr. Spottsville had not received authorization from

this Court to file a successive petition. The district court also denied Mr. Spottsville a certificate of appealability ("COA"). Mr. Spottsville did not file a motion for leave to proceed *in forma pauperis* ("IFP") with the district court. Mr. Spottsville now seeks a COA, IFP status, and the appointment of counsel from this Court. In his motion for appointment of counsel, Mr. Spottsville asserts that this case is beyond his means as a *pro se* litigant, and that his case concerns complicated legal issues.

DISCUSSION:

Motion for a COA

This Court has held that the dismissal of a successive habeas petition for lack of subject matter jurisdiction does not constitute a "final order in a habeas corpus proceeding" for purposes of 28 U.S.C. § 2253(c). *See Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004); *see also Bolin v. Sec'y, Fla. Dep't of Corr., et al.*, No. 15-15761, manuscript op. at 4 (11th Cir. Jan. 7, 2016) (unpublished). Instead, this Court may review that dismissal as a "final decision" under 28 U.S.C. § 1291. *See id.*

Thus, Mr. Spottsville is not required to obtain a COA in order to appeal the dismissal of his § 2254 petition for lack of jurisdiction.

Motion for IFP status

Because Mr. Spottsville filed a motion to proceed IFP, and he is not required to obtain a COA to appeal the dismissal of his § 2254 petition, his appeal is subject to a frivolity determination. *See* 28 U.S.C. § 1915(e)(2)(B)(i). An appeal is frivolous if it is without arguable merit either in law or fact. *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002).

A state prisoner who wishes to file a second or successive habeas petition is required to move the court of appeals for an order authorizing the district court to consider such a petition

before filing the petition in the district court. *See* 28 U.S.C. § 2244(b)(3)(A). Without such authorization, the district court lacks subject-matter jurisdiction to consider the claim. *Farris v. United States*, 333 F.3d 1211, 1216 (11th Cir. 2003).

First, according to Mr. Spottsville's financial affidavit, he qualifies as a pauper. However, Mr. Spottsville's appeal of the denial of his § 2254 petition is frivolous. Mr. Spottsville filed a successive § 2254 petition in the district court without first obtaining permission from this Court. Therefore, the district court was required to dismiss the petition. *See Farris*, 333 F.3d at 1216.

Motion for appointment of counsel

There is no constitutional right to counsel in federal habeas proceedings. *See Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). Rather, this Court may appoint counsel to a person seeking collateral relief, who is financially eligible, only if it determines that the interests of justice so require. *See* 18 U.S.C. § 3006A(a)(2); *see also Schultz v. Wainwright*, 701 F.2d 900, 901 (11th Cir. 1983) (counsel must be appointed "only when the interests of justice or due process so require"). "Appointment of counsel in civil cases is . . . a privilege 'justified only by exceptional circumstances,' such as the presence of 'facts and legal issues [which] are so novel or complex as to require the assistance of a trained practitioner.'" *Kilgo v. Ricks*, 983 F.2d 189, 193 (11th Cir. 1993) (alteration in original). Whether a court should appoint counsel turns on whether the *pro se* litigant needs help to present "the essential merits of his or her position." *Id.*

This Court has indicated that the following factors should be considered when determining whether "exceptional circumstances" exist: (1) the type and complexity of the case; (2) whether the indigent is capable of adequately presenting his case; (3) whether the indigent is in a position to investigate the case adequately; and (4) whether the evidence will consist in large

part of conflicting testimony so as to require skill in the presentation of evidence and in cross-examination. *See Ulmer v. Chancellor*, 691 F.2d 209, 213 (5th Cir. 1982) (*incorporated by Fowler v. Jones*, 899 F.2d 1088, 1096 (11th Cir. 1990)).

Mr. Spottsville is not entitled to the appointment of counsel. At issue is the district court's dismissal of Mr. Spottsville's § 2254 petition as successive. The reason for the district court's dismissal is straightforward, as § 2244(b)(3)(A) specifically states that a prisoner who wishes to file a second or successive habeas petition is required to first move the court of appeals for an order authorizing the district court to consider such a petition. Therefore, this issue is not "so novel or complex" as to require the assistance of counsel.

CONCLUSION:

In light of the foregoing, Mr. Spottsville's motion for a COA is DENIED AS UNNECESSARY. His motion for IFP status is DENIED because the appeal is frivolous, and his motion for appointment of counsel is DENIED because the issue is not "so novel or complex" so as to require the assistance of counsel.

UNITED STATES CIRCUIT JUDGE

16-14926

Daniel A. Spottsville
#GDC977050
Coffee CF - Inmate Legal Mail
1153 N LIBERTY ST PO BOX 650
NICHOLLS, GA 31554

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

DANIEL A. SPOTTSVILLE, *

Petitioner, *

v. Case No. 4:16-cv-177 (CDL)
*

STATE OF GEORGIA,
*

Respondent.
*

JUDGMENT

Pursuant to this Court's Order dated July 1, 2016, and for the reasons stated therein, JUDGMENT is hereby entered dismissing this case.

This 1st day of July 2016.

David W. Bunt, Clerk

s/ Timothy L. Frost, Deputy Clerk

(ITEM-5)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

DANIEL A. SPOTTSVILLE	:	
also known as	:	
Daniel Andrew Spottsville	:	
also known as	:	
DANIEL ANDRE SPOTTSVILLE,	:	
	:	
Petitioner	:	**CIVIL NO: 4:16-CV-0177-CDL**
	:	
VS.	:	
	:	
STATE OF GEORGIA,	:	
	:	
Respondent	:	

ORDER

Petitioner Daniel A. Spottsville has filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his 1998 convictions in both Muscogee County and Marion County, Georgia. Under the rules governing habeas corpus actions, district courts are required to examine every application filed and thereafter enter a summary dismissal if it "plainly appears from the face of the petition that the petitioner is not entitled to relief in the district court." *See* 28 U.S.C. § 2254 Rule 4; *McFarland v. Scott*, 512 U.S. 849, 856 (1994); see also 28 U.S.C. § 2243. Upon review of Petitioner's submissions, the Court finds it plain on face of the present application that Petitioner is not now entitled to relief in the district court.

I. Preliminary Review of Petitioner's Application

As a part of its obligatory review of a habeas petition, the Court also reviews is own records to ensure that the petition is not barred, under 28 U.S.C. § 2244, as a second or successive petition. A review of the Court's records in this case reveals that the instant petition is in fact not Petitioner's first attempt to challenge the same convictions at issue here: *See Spottsville v Terry*, 4:03-cv-00123-CDL (M.D. Ga. Jan. 20, 2004) (habeas challenging 2008 conviction in Marion County, SU98CR033, dismissed as untimely); Spottsville v Terry, 4:04-cv-00154-CDL (M.D. Ga. Sept. 25, 2007) (habeas challenging 2008 conviction in Muscogee County, SU98CR01445, denied).

The law is clear. "Before a second or successive application [for a writ of habeas corpus] is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). In light of his prior lawsuits, the Court finds that Petitioner's present application is a second or successive petition, as to both convictions listed; and Petitioner has provided no indication that he obtained permission from the United States Court of Appeals for the Eleventh Circuit to file it. Therefore, this Court has no jurisdiction to act upon his petition. Petitioner's habeas petition is accordingly **DISMISSED WITHOUT PREJUDICE** to Petitioner's right to file, in the Eleventh Circuit, a motion for leave to file a second or successive habeas petition pursuant to 28 U.S.C. § 2244(b)(3). The **CLERK** of Court is **DIRECTED** to furnish Petitioner with the application form required by the Eleventh Circuit.

II. Denial of Certificate of Appealability

Although Petitioner may wish to appeal this dismissal, a prisoner does not have an absolute right to appeal the summary dismissal of a habeas petition under Rule 4. 28 U.S.C. § 2253(c)(1). Before he could appeal in this case, Petitioner must show that reasonable jurists would find debatable both (1) the merits of an underlying claim and (2) the procedural issues he seeks to raise. 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). Petitioner has not made this showing and is therefore **DENIED** a Certificate of Appealability. *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000) (approving denial of COA before movant filed a notice of appeal).

SO ORDERED, this 1st day of July, 2016.

s/Clay D. Land
CLAY D. LAND
CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

DANIEL A. SPOTSVILLE,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

CIVIL ACTION NO.: 5:16-cv-27

ORDER

Petitioner Daniel Spottsville ("Spottsville"), who is currently housed at Coffee Correctional Facility in Nicholls, Georgia, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. 1.) Spottsville has also moved to proceed *in forma pauperis* in this Court. (Docs. 2, 3.) In his Petition, Spottsville attacks his conviction obtained in the Superior Court of Muscogee County, Georgia. (Doc. 1, pp. 1–2.)

While this Court has jurisdiction over this Petition because Spottsville is incarcerated within this District, it is prudent to address the venue of this action. All applications for writs of habeas corpus filed by persons in state custody, including those filed under 28 U.S.C. § 2254, are governed by 28 U.S.C. § 2241. Medberry v. Crosby, 351 F.2d 1049, 1062 (11th Cir. 2003). For a person who is "in custody under the judgment and sentence of a [s]tate court", Section 2241(d) specifies the "respective jurisdictions" where a Section 2254 petition may be heard. Under Section 2241(d), a person in custody under the judgment of a state court may file his Section 2254 petition in the federal district (1) "within which the [s]tate court was held which

(ITEM-2)

convicted and sentenced him"; or (2) "wherein [he] is in custody." 28 U.S.C. § 2241(d); see also Eagle v. Linahan, 279 F.3d 926, 933 n.9 (11th Cir. 2001). Therefore, the Court may, "in the exercise of its discretion and in furtherance of justice", transfer an application for writ of habeas corpus to "the district court for the district within which the State court was held which convicted" Petitioner. 28 U.S.C. § 2241(d).

In enacting Section 2241(d), "Congress explicitly recognized the substantial advantages of having these cases resolved in the court which originally imposed the confinement or in the court located nearest the site of the underlying controversy." Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 497 (1973); see also 28 U.S.C. § 1404(a) ("For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."). To that end, the federal courts of this State maintain a "longstanding practice" of transferring habeas petitions "to the district of conviction." Isaac v. Brown, No. CV 4:10-071, 2010 WL 2636045, at *1 (S.D. Ga. May 24, 2010), *report and recommendation adopted*, No. CV 4:10-071, 2010 WL 2636059 (S.D. Ga. June 29, 2010) (citing Eagle, 279 F.3d at 933 n.9); see also Order, Hewitt v. Allen, No. 3:14-cv-27 (M.D. Ga. Mar. 26, 2014), ECF No. 4 ("Adherence to this policy results in each district court considering habeas actions arising within the district and in an equitable distribution of habeas cases among the districts of this state.").

The place of Spottsville's conviction, Muscogee County, is located in the Columbus Division of the Middle District of Georgia. 28 U.S.C. § 90(b)(3). Consequently, IT IS HEREBY **ORDERED** that this action shall be **TRANSFERRED** to the United States District

Court for the Middle District of Georgia, Columbus Division. The Clerk of Court is **DIRECTED** to transfer this case to that Court.

SO ORDERED, this 16th day of May, 2016.

R. STAN BAKER
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

5:16-cv-27

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