

# United States Court of Appeals

For the Seventh Circuit  
Chicago, Illinois 60604

Submitted August 6, 2019  
Decided August 16, 2019

## Before

WILLIAM J. BAUER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 18-3388

KENNETH M. GRAY,  
*Petitioner-Appellant,*

Appeal from the United States District  
Court for the Western District of Wisconsin.

v.

No. 18-cv-466-wmc

PAUL S. KEMPER,  
*Respondent-Appellee.*

William M. Conley,  
*Judge.*

## O R D E R

Kenneth Gray has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254, which we construe as an application for a certificate of appealability. We have reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED. Gray's motions to proceed in forma pauperis and for appointment of counsel are DENIED.

Ex. 13

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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KENNETH M. GRAY,

Petitioner,

v.

JUDGMENT IN A CIVIL CASE

Case No. 18-cv-466-wmc

CHERRYL EPPLET, JON LITSCHER,  
and BRAD SCHIMEL,

Respondents.

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This action came for consideration before the court with District Judge William M. Conley presiding. The issues have been considered and a decision has been rendered.

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IT IS ORDERED AND ADJUDGED that judgment is entered dismissing Kenneth Montrell Gray's petition for a writ of habeas corpus under 28 U.S.C. § 2254 without prejudice for petitioner's failure to obtain the authorization required by 28 U.S.C. § 2244(b)(3)(A).

/s/

10/4/2018

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Peter Oppeneer, Clerk of Court

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Date

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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KENNETH M. GRAY,

Petitioner,

ORDER

v.

18-cv-466-wmc

CHERRYL EPPLER, JON LITSCHER, and  
BRAD SCHIMEL,

Respondent.

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Kenneth Gray, a Wisconsin prisoner, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Gray challenges his June 28, 1996, judgment of conviction entered by the Circuit Court for Milwaukee County on one count of first degree reckless homicide. This conviction was the subject of a habeas petition filed by petitioner in the Eastern District of Wisconsin in May 2010, *Gray v. Smith*, 10-cv-421-RTR (E.D. Wis. Feb. 10, 2011). United States District Judge Rudolph T. Randa dismissed that petition as untimely on February 10, 2011. *Id.*, dkt. # 20. Accordingly, the instant petition is petitioner's second petition challenging his June 1996 conviction.

Under 28 U.S.C. § 2244(b)(3)(A), a petitioner may not file a second or successive application for habeas relief in the district court unless he first seeks and obtains an order from the appropriate court of appeals authorizing the district court to consider the application. Petitioner has not obtained an order from the Court of Appeals for the Seventh Circuit authorizing him to file his petition. Accordingly, this court must dismiss the petition.

ORDER

IT IS ORDERED that the petition of Kenneth Gray for a writ of habeas corpus is DISMISSED WITHOUT PREJUDICE for petitioner's failure to obtain the authorization required by 28 U.S.C. § 2244(b)(3)(A).

Entered this 4<sup>th</sup> day of October, 2018.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge