

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-12658-C

JIMMY LEE WHEELER,

Petitioner - Appellant,

versus

SECRETARY, DEPARTMENT OF
CORRECTIONS, STATE OF FLORIDA,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents - Appellees.

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

ORDER: Pursuant to the 11th Cir. R. 42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Jimmy Lee Wheeler has failed to pay the filing and docketing fees to the district court within the time fixed by the rules.

Effective January 14, 2022.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

FOR THE COURT - BY DIRECTION

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JIMMY LEE WHEELER,

Petitioner,

v.

Case No. 8:21-cv-1702-KKM-AEP

SECRETARY, DEPARTMENT
OF CORRECTIONS,

Respondent.

_____ /

ORDER

Jimmy Lee Wheeler filed a *pro se* Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. (Doc. 1). Wheeler challenges his state court convictions entered in Polk County cases 74-2445, 74-2446, and 74-2447.

Wheeler challenged the same state court convictions in an earlier case, *Wheeler v. Sec'y, Dep't of Corr.*, 8:18-cv-1716-VMC-TGW. The Court dismissed that petition on the basis that Wheeler did not meet the “in custody” requirement of 28 U.S.C. § 2254(a) because his sentences had expired. (Doc. 2, 8:18-cv-1716-VMC-TGW). The Court also denied Wheeler’s motion to supplement, in which he explained that he challenged the identified convictions because they were used to enhance the sentences for which he is currently incarcerated. (Docs. 3 & 4, 8:18-cv-1716-VMC-TGW). The Eleventh Circuit Court of Appeals denied Wheeler a certificate of appealability. (Doc. 8, 8:18-cv-1716-VMC-TGW).

The present petition is successive because it challenges the same state court judgments that Wheeler challenged in an earlier action under § 2254. *See Magwood v. Patterson*, 561 U.S. 320, 338-39 (2010) (stating that a § 2254 petition attacking the same state court judgment that was challenged in an earlier § 2254 petition is successive). The Court lacks jurisdiction to consider Wheeler's petition until Wheeler obtains permission from the Eleventh Circuit to file a second or successive petition. *See* 28 U.S.C. § 2244(b)(3)(A) (providing that "[b]efore a second or successive application permitted by this section 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"); *see Burton v. Stewart*, 549 U.S. 147, 157 (2007) ("Burton neither sought nor received authorization from the Court of Appeals before filing his 2002 petition, a 'second or successive' petition challenging his custody, and so the District Court was without jurisdiction to entertain it."); *Hubbard v. Campbell*, 379 F.3d 1245, 1246-47 (11th Cir. 2004) (recognizing that a district court is without jurisdiction to review a second or successive petition if a petitioner has not obtained authorization from the circuit court as required under § 2244(b)(3)(A)). Wheeler does not allege that he has applied to the Eleventh Circuit for an order authorizing the Court to consider his petition.

Accordingly, it is **ORDERED** that Wheeler's petition (Doc. 1) is **DISMISSED WITHOUT PREJUDICE**. The **CLERK** is directed to **CLOSE** this case. Because the Court is without jurisdiction to consider the petition, the Court cannot issue a certificate of appealability (COA). *See Williams v. Chatman*, 510 F.3d 1290, 1295 (11th

Cir. 2007) (“Without . . . authorization [for the district court to review a successive habeas petition] the district court lacked subject matter jurisdiction to consider the successive petition, and therefore could not issue a COA with respect to any of these claims.”).

ORDERED in Tampa, Florida, on July 14, 2021.


Kathryn Kimball Mizelle
United States District Judge