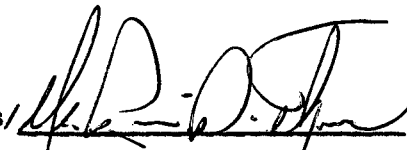


NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In re: RONNIE DANTE THOMAS,
Petitioner,

APPENDIX OF PETITIONER

/s/ 

Mr. Ronnie D. Thomas #254903
Petitioner, pre se
Saginaw Correctional Facility
9625 Pierce Road
Freeland, Michigan 48623

INDEX OF APPENDIX

Appendix A - United States Court of Appeals for the Sixth Cir.Op./Ord.

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 01/05/2023.

Case Name: In re: Ronnie Thomas

Case Number: 22-1718

Docket Text:

ORDER filed : We DISMISS the motion for authorization [6852243-2] [6870413-2] to the extent that Thomas seeks to collaterally attack his 1994 juvenile adjudications and we DENY the motion for authorization to the extent that Thomas seeks to raise a new claim challenging his sentence for carjacking and armed robbery. We DENY all other pending motions [6874504-2] [6870420-2] [6874508-2] as moot.. No mandate to issue; Jeffrey S. Sutton, Chief Circuit Judge; Eric L. Clay, Circuit Judge and John K. Bush, Circuit Judge.

The following documents(s) are associated with this transaction:

Document Description: Order

Notice will be sent to:

Ronnie Dante Thomas
Lakeland Correctional Facility
141 First Street
Coldwater, MI 49036

A copy of this notice will be issued to:

Ms. Andrea M. Christensen-Brown
Ms. Ann E. Filkins

22-1718

Ronnie Dante Thomas
#254903
Lakeland Correctional Facility
141 First Street
Coldwater, MI 49036

No. 22-1718

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Jan 5, 2023

DEBORAH S. HUNT, Clerk

In re: RONNIE DANTE THOMAS,

Movant.

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ORDER

Before: SUTTON, Chief Judge; CLAY and BUSH, Circuit Judges.

Ronnie Dante Thomas, a pro se Michigan prisoner, has filed a motion asking for permission to file a second or successive 28 U.S.C. § 2254 habeas corpus petition. Thomas contends, however, that a magistrate judge erred in construing his 28 U.S.C. § 2241 habeas corpus petition as a successive § 2254 petition and transferring it to this court for certification. He therefore argues that the court should remand his petition to the district court for consideration on the merits. Thomas also moves the court for bail and an expedited decision.

In 2005, a state jury convicted Thomas of carjacking and armed robbery, and the trial court sentenced him to a total term of 22 to 66 years of imprisonment. The Michigan Court of Appeals affirmed. *People v. Thomas*, No. 267334, 2007 WL 1227708 (Mich. Ct. App. Apr. 26, 2007), *perm. app. denied*, 737 N.W.2d 702 (Mich. 2007). Thomas has already filed one § 2254 petition that has been adjudicated on the merits. *See Thomas v. Ludwick*, No. 10-2142 (6th Cir. May 25, 2011). We denied Thomas authorization to file a second or successive habeas petition on three prior occasions. *See In re Thomas*, No. 22-1092 (6th Cir. May 18, 2022); *In re Thomas*, No. 22-1009 (6th Cir. May 6, 2022); *Thomas v. Hoffner*, No. 14-1798 (6th Cir. Jan. 9, 2015).

In Case No. 22-1092, Thomas sought authorization to raise claims that the trial court improperly increased his sentencing range under the state sentencing guidelines based on several allegedly uncounseled 1994 juvenile adjudications for stealing a motor vehicle and that he was innocent of the sentencing enhancement. In considering whether Thomas's claims satisfied the

precertification requirements of 28 U.S.C. § 2244(b)(2), we found that the records that he had filed in support of his claims were unclear as to whether he was represented by counsel in the probate-court proceedings. We assumed, however, that Thomas was unrepresented in those proceedings and “that he could not have discovered the records ‘previously through the exercise of due diligence.’” *In re Thomas*, No. 22-1092, slip op. at 2 (quoting 28 U.S.C. § 2244(b)(2)(B)(i)). Nevertheless, we denied Thomas permission to raise these claims in a successive petition because (1) they were not based on a new rule of constitutional law and (2) evidence that the trial court improperly relied on his uncounseled juvenile adjudications in sentencing him failed to show that he was actually innocent of carjacking and armed robbery. *See id.* (citing 28 U.S.C. § 2244(b)(2)(B)(ii)).

Seizing on our alleged “factual finding” in No. 22-1092, in August 2022, Thomas filed a 28 U.S.C. § 2241 habeas corpus petition in the district court, claiming that his 1994 juvenile adjudications were unconstitutional because he was denied the right to counsel. A magistrate judge construed Thomas’s § 2241 petition as another collateral attack on his carjacking and armed robbery convictions and transferred it to this court for precertification pursuant to *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) (*per curiam*).

Thomas then filed a corrected application for authorization, raising the same claim. Thomas argues, however, that the magistrate judge incorrectly construed his § 2241 petition as a second or successive § 2254 petition because his claim was unripe until we “factually found” in No. 22-1092 that he was uncounseled in the 1994 juvenile proceedings and that he could not have discovered the relevant records earlier. He therefore requests that we remand his petition to the district court for consideration of his claim on the merits.

To the extent that Thomas’s petition is a direct collateral attack on the validity of his 1994 juvenile adjudications, he does not satisfy the “in custody” requirement of either § 2241(c)(3) or § 2254(a), even if the state trial court used those adjudications to increase his sentence on the carjacking and armed robbery convictions, because his sentence in the juvenile proceedings expired long ago. *See Maleng v. Cook*, 490 U.S. 488, 490-91 (1989) (*per curiam*). Thomas was

15 years old at the time, the records he filed in No. 22-1092 show that he was sentenced to continued probation in his mother's home, and the jurisdiction of the state probate court over Thomas terminated no later than the time he reached age 21. *See In re Scherman*, No. 289732, 2009 WL 2952233, at *1-2 (Mich. Ct. App. Sept. 15, 2009) (per curiam). Because Thomas is not in custody on the 1994 juvenile adjudications, federal subject-matter jurisdiction over his § 2241 petition is lacking. *See In re Lee*, 880 F.3d 242, 243 (6th Cir. 2018) (per curiam).

Thomas is correct that *if* the trial court increased his sentence for carjacking and armed robbery based on his 1994 juvenile adjudications, then his sentence is potentially open to collateral attack under § 2254 on the ground that his Sixth Amendment right to counsel was violated in the probate-court proceedings. *See Lackawanna Cnty. Dist. Att'y v. Coss*, 532 U.S. 394, 404 (2001). Nevertheless, because Thomas has already filed one § 2254 petition, his claim is still subject to precertification under § 2244(b)(2). *Cf. Jeffus v. Sec'y, Fla. Dep't of Corr.*, 759 F. App'x 773, 776 (11th Cir. 2018) (per curiam); *see Rittenberry v. Morgan*, 468 F.3d 331, 336 (6th Cir. 2006) (holding “that section 2244(b) applies to any habeas corpus petition seeking relief from custody pursuant to a state court judgment”). And as we previously explained to Thomas, his claim does not satisfy § 2244(b)(2) because it is not based on a new rule of constitutional law or newly discovered evidence that he is actually innocent of carjacking and armed robbery. *See In re Thomas*, No. 22-1092, slip op. at 2; *Keith v. Bobby*, 551 F.3d 555, 557 (6th Cir. 2009).

Finally, to the extent that Thomas argues that his claim was unripe until we “factually found” that he was unrepresented in the probate-court proceedings, he has misread our prior order. We made no such finding—we merely *assumed* that Thomas was unrepresented in those proceedings and denied him leave to file a successive habeas petition on other grounds. *See In re Thomas*, No. 22-1092, slip op. at 2.

For these reasons, we **DISMISS** the motion for authorization to the extent that Thomas seeks to collaterally attack his 1994 juvenile adjudications and we **DENY** the motion for authorization to the extent that Thomas seeks to raise a new claim challenging his sentence for carjacking and armed robbery. We **DENY** all other pending motions as moot.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jan 5, 2023
DEBORAH S. HUNT, Clerk

No. 22-1718

In re: RONNIE DANTE THOMAS,

Movant.

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Before: SUTTON, Chief Judge; CLAY and BUSH, Circuit Judges.

JUDGMENT

THIS MATTER came before the court upon the motion by Ronnie Dante Thomas to authorize the district court to consider a second or successive 28 U.S.C. § 2254 petition for a writ of habeas corpus.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the motion for authorization is DISMISSED, in part, and DENIED, in part.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk