

No. 24-3147
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 11, 2024
KELLY L. STEPHENS, Clerk

JACKIE ROBINSON,)
Petitioner-Appellant,)
v.)
WARDEN STEPHEN REYNOLDS,)
Respondent-Appellee.)

O R D E R

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

Jackie Robinson, a pro se Ohio prisoner, appeals the district court's judgment dismissing his 28 U.S.C. § 2254 habeas corpus petition. Robinson also moves the court for appointment of counsel and to take judicial notice. Because Robinson's petition was in part a second or successive habeas petition, we construe his notice of appeal in part as a motion for authorization and deny the motion because his claims do not satisfy the precertification requirements of 28 U.S.C. § 2244(b)(2). We also construe Robinson's notice of appeal as requesting a certificate of appealability (COA), *see* Fed. R. App. P. 22(b), and deny the COA application. We deny all other pending motions as moot.

In 1976, Robinson was convicted of aggravated burglary in the Summit County Court of Common Pleas and sentenced to 2 to 15 years of imprisonment. Robinson was released on parole. In 1979, Robinson was convicted in the same court of aggravated robbery, carrying a concealed weapon, and possessing a weapon under a disability and sentenced to 9 to 40 years of imprisonment. These two cases left Robinson with a total effective sentence of 11 to 55 years of imprisonment. Robinson has already filed one § 2254 petition challenging his 1979 convictions that was adjudicated on the merits. *See In re Robinson*, No. 16-4768 (6th Cir. May 4, 2017). But

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he has never before filed a § 2254 petition attacking his 1976 conviction. *See In re Robinson*, No. 19-3542 (6th Cir. Sept. 5, 2019).

In this case, Robinson filed a single § 2254 petition that attacked both convictions. The district court concluded that under Rule 2(e) of the Rules Governing Section 2254 Cases, Robinson could not challenge two convictions from different proceedings in the same petition. Accordingly, the district court dismissed Robinson's petition without prejudice and denied Robinson a COA. Robinson's appeal followed.

Robinson's petition claimed in part that the trial court improperly increased his sentence on the 1979 convictions based on his allegedly defective 1976 conviction. Further, Robinson asserted that he was denied the effective assistance of counsel in the 1979 case. Because these were successive claims, the district court should have transferred them to this court. *See Gonzalez v. Crosby*, 545 U.S. 524, 530 (2005); *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) (per curiam). Accordingly, we construe Robinson's notice of appeal in part as a motion for authorization to file a successive petition, *see In re Bowling*, 422 F.3d 434, 440 (6th Cir. 2005), and deny the motion because the claims are not based on newly discovered evidence or a new rule of constitutional law, *see* 28 U.S.C. § 2244(b)(2).

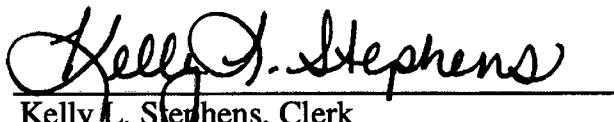
Robinson also sought relief from his 1976 conviction based on the trial court's allegedly improper nunc pro tunc order correcting a journal entry that erroneously stated that he had pleaded guilty to robbery instead of aggravated burglary. The district court dismissed this claim on procedural grounds. This claim asserted a noncognizable state-law violation. *See Bugh v. Mitchell*, 329 F.3d 496, 512 (6th Cir. 2003). Accordingly, we deny Robinson a COA because reasonable jurists would not debate "whether the petition states a valid claim of the denial of a constitutional right." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

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For the reasons stated, we construe Robinson's notice of appeal in part as a motion for authorization and **DENY** the motion. We also construe Robinson's notice of appeal as requesting a COA and **DENY** the COA application. We **DENY** all other pending motions as moot.

ENTERED BY ORDER OF THE COURT


Kelly L. Stephens, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 07/11/2024.

Case Name: Jackie Robinson v. Stephen Reynolds

Case Number: 24-3147

Docket Text:

ORDER filed : We construe Robinson's notice of appeal in part as a motion for authorization and DENY the motion. We also construe Robinson's notice of appeal as requesting a COA and DENY the COA application. We DENY all other pending motions as moot. No mandate to issue. Jeffrey S. Sutton, Chief Circuit Judge; Eric L. Clay, Circuit Judge and Stephanie Dawkins Davis, Circuit Judge.

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

Document Description: Order

Notice will be sent to:

Jackie Robinson
Grafton Correctional Institution
2500 S. Avon Belden Road
Grafton, OH 44044

A copy of this notice will be issued to:

Ms. Sandy Opacich

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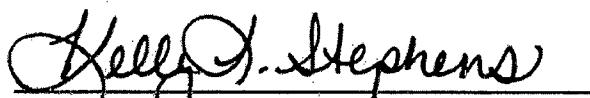
JUDGMENT

THIS MATTER came before the court upon the application by Jackie Robinson for a certificate of appealability.

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

IT IS ORDERED that the construed application for a certificate of appealability and motion for authorization to file a second or successive 28 U.S.C. § 2254 petition are DENIED.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk

appendix A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JACKIE N. ROBINSON,)	CASE NO. 23-cv-1780
)	
)	
PLAINTIFF,)	JUDGE SARA LIOI
)	
vs.)	
)	ORDER
)	
KEITH J. FOLEY,)	
)	
)	
DEFENDANT.)	

Pro se petitioner Jackie N. Robinson (“Robinson”) is a state prisoner confined at the Lake Erie Correctional Institution. On September 23, 2023, he filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in connection with two convictions in the 1970s: (1) a 1976 conviction in Summit County Court of Common Pleas – case number CR-76-2-204; and (2) a 1979 conviction in Summit County Court of Common Pleas – case number CR-79-3-319(A). (Doc. No. 1, at 1.) As far as the Court can tell from Robinson’s petition, these two convictions are unrelated. (*Compare* Doc. No. 1-5, at 1 (Judge Evan J. Reed correcting an earlier journal entry to reflect that Robinson pled guilty to burglary in 1976) *with* Doc. No. 1-8, at 2 (Judge Theodore R. Price sentencing Robinson in 1979 after a jury returned guilty verdicts for charges related to Robinson’s conduct in 1979, specifically: aggravated robbery, carrying a concealed weapon, and having a weapon while under disability).)

appendix B

Rule 2 of the Rules Governing Section 2254 Cases in the United States District Courts (“Habeas Rules”) requires that “petitioner[s] seek[ing] relief from judgments of more than one state court must file a separate petition covering the judgment or judgments of each court.” Because Robinson challenges more than one conviction from the Summit County Court of Common Pleas, the present case requires the Court to define the phrase “more than one state court” as it is used in Habeas Rule 2(e).

District courts interpreting this phrase have largely, but not uniformly, held that it prevents petitioners from challenging two convictions from the same court within a single petition if the convictions were from different proceedings. *See, e.g., Maddox v. Thomas*, No. 18-cv-133, 2018 WL 2187976, at *5 (D. Haw. May 11, 2018) (dismissing without prejudice a petition for a writ of habeas corpus because it amounted to “filing two separate petitions challenging the two separate judgments at issue[]” from the same state court); *Greene v. Hernandez*, No. 1:17-cv-307, 2018 WL 7458643, at *2 (W.D.N.C. June 1, 2018) (dismissing a petition challenging multiple disciplinary actions taken by the same correctional institution because it violated Habeas Rule 2(e)); *Gray v. Swarthout*, No. 10-cv-2463, 2011 WL 3875896, at *2 (E.D. Cal. Sept. 1, 2011) (finding that “[b]ecause the instant petition challenges a 1998 judgment and a 2007 judgment [from the same state court], it violates [Habeas] Rule 2(e) and should be dismissed[]”), *report and recommendation adopted*, No. 10-cv-2463, 2011 WL 5984025 (E.D. Cal. Nov. 22, 2011); *Tigg v. Colson*, No. 3:13-cv-324, 2013 WL 2285562, at *2 (M.D. Tenn. May 23, 2013) (finding that a petitioner “failed to heed [the] mandate” of Habeas Rule 2(e) by “fil[ing] one petition challenging two different convictions” from the same state court).

Further, many of the district courts that considered this interpretation of Habeas Rule 2(e), but ultimately refused to adopt it, dismissed the petition in question on other grounds, thus making their contrary legal conclusions dicta.¹ See, e.g., *Davis v. Hofbauer*, No. 05-74048, 2007 WL 496476, at *1 n.1 (E.D. Mich. Feb. 12, 2007) (denying a habeas petition challenging two convictions from the same state court on other grounds); *Weaver v. Harry*, No. 1:17-cv-963, 2017 WL 5589240, at *2 n.1 (W.D. Mich. Nov. 21, 2017) (same).

Here, Robinson's petition impermissibly challenges two convictions from different proceedings. According to the documents provided by Robinson, the two convictions occurred three years apart, the cases were assigned to different judges, they were supported by different underlying conduct, and the cases were not consolidated for trial. Due to this, Robinson's petition violates Habeas Rule 2(e) and must be dismissed.

For these reasons, Robinson's petition is DENIED without prejudice and Robinson may file separate petitions for each of the convictions he seeks to challenge. Robinson is warned, however, that the Court's dismissal without prejudice does not constitute a determination that a § 2254 challenge to those convictions is timely under 28 U.S.C. § 2244(d), that those grounds for relief are properly exhausted, or that they otherwise have

¹ To the Court's knowledge, no circuit court has directly addressed this issue. The Fifth Circuit addressed a tangential issue in *Hardemon v. Quartermar*, 516 F.3d 272 (5th Cir. 2008), but the uniqueness of that case's procedural history and posture make it inapposite to the present case. In *Hardemon*, the petitioner was found guilty of three separately charged counts after "[t]he counts were consolidated for trial[.]" *Id.* at 273. Subsequently, one of Hardemon's petitions for relief under 28 U.S.C. § 2254 was denied *sua sponte* by a district court because he failed to include his present challenge within an earlier petition for another of the three counts. The Fifth Circuit reversed the district court and held that Hardemon was "permitted, but not required, to challenge his separate convictions in a single § 2254 petition." *Id.* at 276 (emphasis in original). Thus, the Fifth Circuit's analysis dealt with when challenges *must* be brought together under the Habeas Rules and its reasoning is not directly relevant to the question of this case (*i.e.*, when petitioners are *permitted* to challenge multiple convictions within a single petition).

merit or give rise to cognizable § 2254 claims.² In fact, it appears that his claims may be untimely, but the Court does not decide this issue given the nature of the filing.

Necessarily, the motions that Robinson filed in addition to his petition (Docs. Nos. 2, 4, 5, 6, and 7) are denied as moot. Robinson may refile these motions, as appropriate and permitted by the relevant rules, if he files new petition(s) following the Court's order.

IT IS SO ORDERED.

Dated: January 29, 2024

Sly L

**HONORABLE SARA LIOI
CHIEF JUDGE
UNITED STATES DISTRICT COURT**

² Robinson has challenged his 1979 convictions on multiple occasions. *See, e.g., Robinson v. Fender*, No. 5:19-cv-1067 (N.D. Ohio); *Robinson v. Fender*, No. 19-cv-1245 (N.D. Ohio). As the court stated in those cases, prior to filing a second or successive petition for a writ of habeas corpus, petitioners must first secure authorization from the applicable court of appeals. *See Robinson v. Fender*, No. 5:19-cv-1067, Doc. No. 5, at 3 (N.D. Ohio) (citing *Keith v. Bobby*, 618 F.3d 594, 599–600 (6th Cir. 2010)). If Robinson files a second or successive petition for his 1979 conviction without first receiving authorization from the Sixth Circuit, this Court will take no action prior to transferring the case to the Sixth Circuit. *See id.* (citing *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997)).

**Additional material
from this filing is
available in the
Clerk's Office.**