

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

LEONARD S. INGRAM,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 02-264-GMS
)	
THOMAS CARROLL, Warden, and)	
ATTORNEY GENERAL OF THE)	
STATE OF DELAWARE,)	
)	
Respondents.)	
)	

MEMORANDUM AND ORDER

Petitioner Leonard S. Ingram is a Delaware inmate incarcerated at the Delaware Correctional Center in Smyrna. Ingram has filed with the court a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The respondents have filed a motion for leave to file a motion to dismiss the petition, as well as a motion to dismiss the petition. (D.I. 8, 9.) As explained below, the court concludes that Ingram’s habeas petition is a second or successive application filed without authorization from the United States Court of Appeals. Accordingly, the court will grant the respondents’ motions, and will dismiss Ingram’s petition.

I. BACKGROUND

In July 1993, a jury in the Delaware Superior Court found Leonard S. Ingram guilty of possession of cocaine with intent to deliver. The Superior Court sentenced Ingram to ten years imprisonment. The Delaware Supreme Court affirmed Ingram’s conviction and sentence.

Ingram v. State, No. 367, 1993, 1994 WL 91240 (Del. Mar. 7, 1994).

In 1995, Ingram challenged his 1993 conviction by filing a petition for federal habeas relief pursuant to 28 U.S.C. § 2254. The court denied Ingram’s petition on the merits. *Ingram v. Snyder*, Civ. A. No. 95-312-RRM (D. Del. Nov. 2, 1995).

Ingram has now filed the current petition for federal habeas relief, again seeking to challenge his 1993 conviction. (D.I. 1.) The court instructed the respondents to file an answer and the appropriate state court records. (D.I. 4.) Instead, the respondents have filed a motion for leave to file a motion to dismiss in lieu of an answer, as well as their motion to dismiss. (D.I. 8, 9.) In their motions, the respondents ask the court to dismiss Ingram’s petition because it is a second or successive petition filed without authorization from the Third Circuit. Ingram has also filed a motion for release on bail pending disposition of his habeas petition. (D.I. 7.)

II. DISCUSSION

In the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), Congress established new procedures governing the filing of second or successive habeas petitions. *See In re Minarik*, 166 F.3d 591, 599 (3d Cir. 1999). Effective April 24, 1996, the AEDPA provides:

Before 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.

28 U.S.C. § 2244(b)(3). According to the Third Circuit, “anyone seeking to file a second or successive petition under 28 U.S.C. § 2254 after April 24, 1996, must move in the appropriate Court of Appeals for an order authorizing the District Court to consider the application,” even if the first petition was filed before the enactment of the AEDPA. *Minarik*, 166 F.3d at 600, 609. Absent authorization from the appropriate court of appeals, a district court lacks jurisdiction to

consider a second or successive habeas petition. *See Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996).

Ingram's first petition for federal habeas relief challenged his 1993 conviction and was denied on the merits. His current application is another attempt to challenge his 1993 conviction in federal court. The court finds that Ingram's current application is a second or successive petition subject to the authorization requirement of § 2244(b)(3). *See Christy v. Horn*, 115 F.3d 201, 208 (3d Cir. 1997)(stating that a petition is not second or successive if the first petition was dismissed without prejudice). He has not obtained authorization from the Third Circuit to file it.

For these reasons, the court concludes that it lacks jurisdiction to consider Ingram's current application. Accordingly, the court will dismiss the petition, and will deny as moot his motion for release on bail pending habeas review.

III. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that:

- (1) The respondents' motion for leave to file a motion to dismiss in lieu of an answer (D.I. 8) is GRANTED.
- (2) The respondents' motion to dismiss (D.I. 9) is GRANTED, and Ingram's petition for a writ of habeas corpus is DISMISSED as a second or successive application filed without authorization from the United States Court of Appeals. *See* 28 U.S.C. § 2244(b)(3).
- (3) Ingram's motion for release on bail pending disposition of his habeas petition (D.I. 7) is DENIED as moot.

- (4) The court declines to issue a certificate of appealability because Ingram has failed to make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

IT IS SO ORDERED.

Dated: June 21, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE