

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

KEVIN S. EPPERSON,                    )  
  )  
                  Petitioner,            )  
  )  
v.                                        )     Civil Action No. 04-332-KAJ  
  )  
THOMAS CARROLL,                    )  
Warden, and M. JANE                )  
BRADY, Attorney General            )  
of the State of                        )  
Delaware,                             )  
  )  
                  Respondents.        )

**MEMORANDUM ORDER**

On April 24, 1996, the President signed into law the Antiterrorism and Effective Death Penalty Act, ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214. Section 106(b) of AEDPA, which is codified at 28 U.S.C. § 2244(b)(3), requires a state prisoner submitting a second or successive habeas petition to obtain leave from the court of appeals to file the petition.

In a petition dated May 21, 2004, Petitioner Kevin S. Epperson, an inmate at the Delaware Correctional Center in Smyrna, Delaware, instituted the present action seeking federal habeas corpus relief pursuant to 28 U.S.C. § 2254 and requested leave to proceed in forma pauperis. (D.I. 1; D.I. 2.) Epperson previously applied for federal habeas corpus relief in this Court in May 1999 and March 2001. Both petitions challenged his 1996 conviction and sentence as an habitual offender for kidnaping in the first degree and unlawful sexual contact in the second

degree. This Court denied Epperson's first petition on the merits and his second petition as successive. See *Epperson v. Snyder*, Civ. A. No. 99-313-RRM (D. Del. Aug. 11, 2000); *Epperson v. Snyder*, Civ. A. No. 01-210-RRM (D. Del. Apr. 2, 2001).

In his current § 2254 petition, Epperson argues that his 1987 conviction for narcotics offenses was illegal, and thus, the conviction was illegally used to enhance his 1996 sentence.

(D.I. 2.) Essentially, he is trying to challenge the legality of his 1996 sentence. The record is clear that Epperson has not obtained leave from the Court of Appeals for the Third Circuit to file the instant petition. Accordingly, pursuant to 28 U.S.C. § 2244(b)(3), this Court does not have jurisdiction over the pending petition. See *Lopez v. Douglas*, 141 F.3d 974, 975-76 (10th Cir. 1998) (without authorization from the Court of Appeals "the district court lacked jurisdiction to decide his unauthorized second petition, and this court must vacate the district court order"); *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996) ("A district court must dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for its filing.")

THEREFORE, at Wilmington this 14th day of July, 2004; IT IS ORDERED that:

1. Petitioner Kevin S. Epperson's request to proceed *in forma pauperis* is granted. (D.I. 1.)

2. Epperson's application for habeas corpus relief is DISMISSED and the writ is DENIED. (D.I. 2.)

3. Epperson has failed to make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), and a certificate of appealability is not warranted. See *United States v. Eyer*, 113 F.3d 470 (3d Cir. 1997); 3rd Cir. Local Appellate Rule 22.2 (2000).

4. Pursuant to Rules 3(b) and 4, 28 U.S.C. foll. § 2254, the Clerk shall forthwith serve by certified mail a copy of the petition and this Memorandum Order upon: (1) the above-named Warden of the facility in which Epperson is housed; and (2) the Attorney General for the State of Delaware.

Kent A. Jordan  
United States District Court