

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 6, 2016

Elisabeth A. Shumaker
Clerk of Court

In re: DAVID T. SUMMERS,

Movant.

No. 16-4167
(D.C. No. 2:15-CV-00604-JNP)
(D. Utah)

ORDER

Before **GORSUCH, EBEL, and O'BRIEN**, Circuit Judges.

David T. Summers, a state prisoner proceeding pro se, seeks authorization to file a second or successive 28 U.S.C. § 2254 habeas petition. For the following reasons, we dismiss his motion.

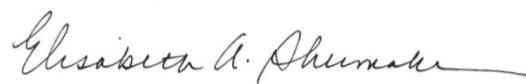
Mr. Summers pleaded guilty in Utah state court to a first-degree felony charge of attempted sexual abuse of a child. He subsequently filed a § 2254 habeas petition in federal court. The district court dismissed the § 2254 petition because Mr. Summers had failed to exhaust his state remedies. Mr. Summers then attempted to file another § 2254 petition, but that petition was never actually filed because he failed to pay the filing fee.

In August 2015, Mr. Summers filed another § 2254 habeas petition. That August 2015 petition remains pending in the United States District Court for the District of Utah (No. 2:15-cv-00604-JNP) without any substantive rulings.

The allegations Mr. Summers makes in his motion for authorization appear to be the same allegations that he made in his August 2015 petition that is currently pending in

district court. Because the district court has not yet ruled on that petition, it appears as though his request for authorization to file a successive habeas petition is premature. Accordingly, we dismiss his motion for authorization.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal flourish.

ELISABETH A. SHUMAKER, Clerk