

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DAVID C. MYERS,

Petitioner,

v.

Case No.: 2:24-cv-1158-SPC-KCD

SECRETARY, DEPARTMENT OF
CORRECTIONS,

Respondent.

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OPINION AND ORDER

Before the Court is David C. Myers' Motion for a Writ of Habeas Corpus (Doc. 1). Myers is a prisoner of the State of Florida, and he challenges various aspects of his 2011 conviction. Myers filed a prior federal habeas petition in the Tampa Division of the Middle District of Florida, styled *Myers v. Sec'y, Dep't of Corr.*, 8:22-cv-1851-MSS-CPT. Judge Mary Scriven dismissed it as untimely.

“Congress proscribes that a state prisoner only has one opportunity for federal habeas review; a second petition will be denied as successive.” *Faison v. Sec'y, Fla. Dep't of Corr.*, 806 F. App'x 938, 938-39 (11th Cir. 2020). Before bringing a successive petition, a prisoner must obtain authorization from the court of appeals. Otherwise, the district court lacks jurisdiction. “A dismissal of a § 2254 petition as untimely constitutes a dismissal with prejudice on the


merits for purposes of restricting a second or successive § 2254 petition.” *Jeffus v. Sec’y, Fla. Dep’t of Corr.*, 759 F. App’x 773, 775 (11th Cir. 2018).

Accordingly, Myers’ construed habeas petition (Doc. 1) is **DISMISSED** as successive. The Clerk is **DIRECTED** to terminate any deadlines, enter judgment, and close this case.

DENIAL OF CERTIFICATE OF APPEALABILITY

A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a certificate of appealability (COA). “A [COA] may issue...only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make such a showing, a petitioner must demonstrate that “reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong,” *Tennard v. Dretke*, 542 U.S. 274, 282 (2004) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)), or that “the issues presented were adequate to deserve encouragement to proceed further,” *Miller–El v. Cockrell*, 537 U.S. 322, 335–36 (2003) (citations omitted). Myers has not made the requisite showing here and may not have a certificate of appealability.

DONE and **ORDERED** in Fort Myers, Florida on January 2, 2025.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

SA: FTMP-1

Copies: All Parties of Record