

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 19-14578  
Non-Argument Calendar

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D.C. Docket No. 1:19-cv-21562-UU

MAESTRO MATTHEW FAISON,  
a.k.a. Leo Jackson,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Florida

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(May 8, 2020)

Before MARTIN, BRANCH, and LAGOA, Circuit Judges.

PER CURIAM:

Maestro Matthew Faison, a Florida prisoner proceeding pro se, appeals the district court's dismissal of his 28 U.S.C. § 2254 petition. Faison is serving a 297-year sentence for kidnapping, sexual battery, and burglary. In his petition Faison

argued that he was sentenced under Florida statutes governing probation and parole which were enacted after his crime of conviction, in violation of the Ex Post Facto Clause of the United States Constitution. He also argued that he was sentenced outside of the state sentencing guideline range. This is not the first § 2254 petition Faison has filed. A magistrate judge recommended that Faison's petition be dismissed because Faison did not obtain an order from this Court authorizing the district court to consider a second or successive application for relief. The district court adopted the magistrate judge's recommendation and dismissed Faison's petition for lack of jurisdiction.

We review de novo a district court's dismissal of a § 2254 petition as successive. Bowles v. Sec'y, Fla. Dep't of Corr., 935 F.3d 1176, 1180 (11th Cir. 2019). We liberally construe petitions filed pro se. Dupree v. Warden, 715 F.3d 1295, 1299 (11th Cir. 2013).

The district court was correct to dismiss Faison's petition for want of jurisdiction as an improper second or successive § 2254 petition. Before a petitioner may file a second or successive habeas petition, he first must obtain an order from the court of appeals authorizing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A). Without such authorization, the district court lacks jurisdiction to consider the second or successive petition. Lambrix v. Sec'y, DOC, 872 F.3d 1170, 1180 (11th Cir. 2017) (per curiam).

Because Faison previously filed a § 2254 petition, he must obtain an order from this Court before he can bring a successive petition. Faison's previous § 2254 petition, filed in 2010, was also dismissed as an improper second or successive petition. Order, Faison v. McNeil, No. 10-cv-21758-JAL (S.D. Fla. July 1, 2010), ECF 7. And his first petition, filed in 2001, was dismissed as time barred. Order, Faison v. Seimoney, No. 01-cv-04129-DMM (S.D. Fla. Jan. 15, 2002), ECF 17. Dismissal of a § 2254 petition as untimely constitutes a dismissal with prejudice on the merits for purposes of the bar against second or successive § 2254 petitions. See Patterson v. Sec'y, Fla. Dep't of Corr., 849 F.3d 1321, 1325–26 (11th Cir. 2017) (en banc) (“When [the petitioner’s] first federal petition was dismissed as untimely, [he] lost his one chance to obtain federal habeas review of his 1998 judgment. Because [his new] petition challenges the 1998 judgment a second time, the district court correctly dismissed it as second or successive.” (citation omitted)).

On appeal, Faison does not challenge the district court's determination that his petition was an improper second or successive filing. Even if we were to construe Faison's pleadings liberally and assume he did not abandon this issue, our independent review confirms the district court's ruling. A subsequent habeas filing is not barred by the second-or-successive rule when a petitioner raises a claim that could not have been raised in a prior habeas petition, Stewart v. United States, 646

F.3d 856, 860, 865 (11th Cir. 2011), or seeks to challenge a different judgment than was challenged in the first § 2254 application, see Magwood v. Patterson, 561 U.S. 320, 331, 130 S. Ct. 2788, 2796 (2010) (holding that the “first application challenging [a] new judgment” is not a second or successive petition). Neither of these exceptions apply, however, as Faison’s petition challenged the same judgment as his first § 2254 petition and did not raise claims that could not have been raised earlier. Faison was therefore required to obtain our authorization before filing a successive § 2254 petition. Because he failed to do so, we affirm.

**AFFIRMED.**