

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-11786

Non-Argument Calendar

DAVID BRITT,

Petitioner-Appellant,

versus

KARL FORT,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:20-cv-04304-SCJ

Before WILSON, ROSENBAUM, and DUBINA, Circuit Judges.

PER CURIAM:

David Britt, a Georgia prisoner proceeding *pro se*, appeals the district court's order dismissing his habeas corpus petition under 28 U.S.C. § 2254. Britt argues that the district court erred when it determined that his case is a successive § 2254 petition because Britt had filed a previous federal habeas petition challenging his Georgia state convictions and sentences that the district court denied on the merits. After a review of the record and having read Britt's appellate brief, we affirm the district court's order of dismissal.¹

I.

We review *de novo* a district court's order of dismissal for lack of jurisdiction. *Howard v. Warden*, 776 F.3d 772, 775 (11th

¹ The Appellee did not file an appellate brief.

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Cir. 2015). We also review *de novo* whether a habeas petition is successive. *Patterson v. Sec’y, Fla. Dep’t of Corr.*, 849 F.3d 1321, 1324 (11th Cir. 2017) (*en banc*). A Certificate of Appealability (“COA”), typically required for appeals from a final order of a habeas proceeding, is not required for an appeal of an order dismissing a petitioner’s filing as a successive habeas petition. 28 U.S.C. § 2253(c); *See Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004). We can review the dismissal as a “final decision” under 28 U.S.C. § 1291. *See Hubbard*, 379 F.3d at 1247.

Under 28 U.S.C. § 2244(b), a state prisoner who wishes to file a second or successive habeas corpus petition must move the court of appeals for an order authorizing the district court to consider such a petition. *See* 28 U.S.C. § 2244(b)(3)(A). Whether a habeas petition is successive depends “on the judgment challenged.” *Patterson*, 849 F.3d at 1325. Where the prisoner fails to seek or

obtain authorization to file a successive petition, the district court lacks jurisdiction to consider the merits of the petition. *Burton v. Stewart*, 549 U.S. 147, 152-53, 127 S. Ct. 793, 796 (2007). We liberally construe *pro se* briefs. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

II.

We conclude that, based on the record, the district court properly dismissed Britt's petition for lack of jurisdiction because Britt had previously filed a habeas petition challenging the same convictions and he never received the required authorization to file a successive petition. *See* 28 U.S.C. § 2244(b)(3)(A); *Burton*, 548 U.S. at 152-53. Accordingly, we affirm the district court's order dismissing Britt's habeas petition for lack of jurisdiction.²

² We DENY Britt's motion to supplement the record.

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AFFIRMED.