

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KENNETH CHAPLIN,	:	
Petitioner,	:	CIVIL ACTION NO. 05 -cv-6647
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	CRIMINAL NO. 90-cr-238-6
Respondent.	:	

MEMORANDUM ORDER

Gene E.K. Pratter, J.

May 16, 2006

Petitioner, Kenneth Chaplin, has filed the above-captioned petition pursuant to 28 U.S.C. § 2255, seeking habeas corpus relief from his conviction and/or sentence emanating from the prosecution in Criminal Action No. 90-238-6. Mr. Chaplin previously filed two petitions pursuant to 28 U.S.C. § 2255, docketed at 97-cv-3029 and 01-cv-4066, both of which purported to attack the same conviction.

The action docketed at 01-cv-4066 was ultimately dismissed by the United States Court of Appeals for the Third Circuit on grounds of the failure on Petitioner's part to timely pursue his claims. This dismissal acts as a denial on the merits. See Woodard v. Diguglielmo, No. 05-1108, 2006 U.S. Dist. LEXIS 4561, *11 (E.D. Pa. Feb. 3, 2006) (quoting Murray v. Greiner, 394 F.3d 78, 81 (2d Cir. 2005) ("Because the dismissal of a prior § 2255 petition as tardy under the controlling statute of limitations presents a 'permanent and incurable' bar to review of the claim, we concluded that such a dismissal constitutes an adjudication on the merits and subjects future challenges filed by the petitioner under § 2255 to the gatekeeping requirements of § 2244(b)(3)."); see also United States v. Harris, No. 02-6825, 2002 U.S. Dist. LEXIS 24439, *10-13 (E.D. Pa. Dec. 20, 2002).

The Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. §§ 2241- 2266, provides in relevant part that before a second or successive petition is filed in the district court, the prisoner must first obtain permission to file in the district court from the circuit court, pursuant to 28 U.S.C. § 2244(b)(3)(A). In the absence of such circuit permission, the district court lacks subject matter jurisdiction to consider a habeas corpus petition. Stewart v. Martinez-Villaeral, 523 U.S. 637, 641 (1998); Felker v. Turpin, 518 U.S. 651, 657 (1996); Benchoff v. Colleran, 404 F.3d 812, 816 (3d Cir. 2005). Mr. Chaplin has not yet obtained such permission.

Accordingly, it is hereby **ORDERED** as follows:

1. Leave is granted Petitioner to proceed in forma pauperis in this matter for all purposes.
2. This civil action is **DISMISSED WITHOUT PREJUDICE** on the grounds that this court lacks subject matter jurisdiction over it.
3. The Clerk of the United States District Court for the Eastern District of Pennsylvania shall mark this matter as **CLOSED** for all purposes, including for statistical purposes.
4. Upon review of the docket in the criminal action (90-238-6), it appears the Clerk of the Court has entered onto the docket certain letter inquiries from Mr. Chaplin as a Motion Requesting Evidence and a Freedom of Information Act Request Pursuant to 5 U.S.C. § 552 (Docket Nos. 97 and 98). In light of the ruling herein, those letter requests will be denied.

BY THE COURT:

S/Gene E.K. Pratter
GENE E. K. PRATTER
UNITED STATES DISTRICT JUDGE

