

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
MICHIGAN, SOUTHERN DIVISION

Harvey Lee Preston v. Terry Wilkins

Preston · No. 2:25-cv-14154 · Decided December 29, 2025

SUMMARY

The United States District Court for the Eastern District of Michigan directs the Clerk to transfer Harvey Lee Preston’s successive 28 U.S.C. § 2254 habeas petition to the United States Court of Appeals for the Sixth Circuit. The court concludes that Preston had not obtained the appellate authorization required by 28 U.S.C. § 2244(b)(3)(A) and that transfer was required under 28 U.S.C. § 1631.

CASE DETAILS

COURT	United States District Court for the Eastern District of Michigan, Southern Division
WRITING FOR THE COURT	Robert J. White
JURISDICTION	United States District Court for the Eastern District of Michigan, Southern Division
DECIDED	December 29, 2025
DOCKET	2:25-cv-14154
DISPOSITION	remanded
PROCEDURAL POSTURE	Petitioner filed a successive federal habeas corpus petition under 28 U.S.C. § 2254 without obtaining authorization from the United States Court of Appeals for the Sixth Circuit. The district court ordered the Clerk to transfer the petition to the Sixth Circuit.
STANDARD OF REVIEW	The district court addressed its jurisdiction to consider a successive habeas petition as a matter of statutory authorization and jurisdiction; it did not reach the merits.
PRECEDENTIAL VALUE	Unpublished district court opinion; precedential status not stated.

TOPICS

- federal habeas corpus
- successive petitions
- subject matter jurisdiction
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court may consider Preston's second or successive federal habeas petition under 28 U.S.C. § 2254 without prior authorization from the Sixth Circuit.
2. Whether an unauthorized successive habeas petition must be transferred to the appropriate court of appeals under 28 U.S.C. § 1631.

HOLDINGS

1. A federal district court lacks jurisdiction to consider a second or successive habeas petition challenging a conviction previously challenged in an earlier federal habeas petition unless the petitioner first obtains authorization from the appropriate court of appeals under 28 U.S.C. § 2244(b)(3)(A).
2. When a petitioner files a second or successive habeas petition in the district court without the required appellate authorization, the district court must transfer the case to the appropriate court of appeals.

KEY QUOTATIONS

“Before filing a habeas petition challenging a conviction previously challenged in a prior habeas petition, the petitioner must “move in the appropriate court of appeals for an order authorizing the district court to consider the application.””

FACTUAL BACKGROUND

Preston is confined at the Baraga Maximum Correctional Facility in Michigan and challenges convictions for carjacking, first-degree home invasion, unarmed robbery, and second-degree criminal sexual conduct. His convictions were affirmed on appeal. He previously filed a federal habeas petition that was denied on the merits and had repeatedly been denied permission by the Sixth Circuit to file successive federal habeas petitions.

PROCEDURAL HISTORY

Preston's Michigan convictions were affirmed by the Michigan Court of Appeals, and the Michigan Supreme Court denied leave to appeal. His first federal habeas petition was denied on the merits by the Eastern District of Michigan, and the Sixth Circuit dismissed his appeal. After repeatedly being denied authorization to file successive federal habeas petitions, Preston filed the present petition without appellate authorization. The district court directed transfer of the case to the Sixth Circuit under 28 U.S.C. § 1631.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Clerk was ordered to transfer the case to the United States Court of Appeals for the Sixth Circuit under 28 U.S.C. § 1631 for a determination whether Preston may file a successive petition.

CASES CITED

- *People v. Preston*, 2012 WL 5853223, No. 298796 (Mich. Ct. App. Oct. 30, 2012)
- *Preston v. Gidley*, 2017 WL 4572336, No. 14-10606 (E.D. Mich. Oct. 12, 2017)
- *Franklin v. Jenkins*, 839 F.3d 465, 473 (6th Cir. 2016)
- *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997)
- *In re Preston*, No. 18-1847 (6th Cir. Nov. 26, 2018)
- *In re Preston*, No. 20-1641 (6th Cir. Dec. 8, 2020)
- *In re Preston*, No. 21-1071 (6th Cir. May 12, 2021)
- *In re Preston*, No. 21-2620 (6th Cir. Sept. 23, 2021)
- *In re Preston*, No. 22-1072 (6th Cir. July 28, 2022)
- *In re Preston*, No. 22-1723 (6th Cir. Sept. 28, 2022)
- *In re Preston*, No. 24-1010 (6th Cir. Feb. 13, 2024)
- *In re Preston*, No. 24-1052 (6th Cir. Feb. 21, 2024)
- *In re Preston*, No. 24-1067 (6th Cir. Mar. 7, 2024)
- *In re Preston*, No. 24-1232 (6th Cir. Apr. 17, 2024)
- *In re Preston*, No. 24-1521 (6th Cir. Nov. 1, 2024)
- *In re Preston*, No. 24-1597 (6th Cir. Nov. 1, 2024)
- *In re Preston*, No. 25-1045 (6th Cir. Mar. 20, 2025)
- *In re Preston*, No. 25-1162 (6th Cir. Mar. 20, 2025)
- *In re Preston*, No. 25-1741 (6th Cir. Dec. 23, 2025)

OPINION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION HARVEY LEE PRESTON, Petitioner, Case No. 25-cv-14154 v. Honorable Robert J. White TERRY WILKINS, Respondent. OPINION AND ORDER DIRECTING THE CLERK OF THE COURT TO TRANSFER THE SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS TO THE COURT OF APPEALS FOR THE SIXTH CIRCUIT Petitioner Harvey Lee Preston, confined at the Baraga Maximum Correctional Facility in Baraga, Michigan, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

ECF No. 1. Preston challenges his Oakland County convictions for carjacking, first-degree home invasion, unarmed robbery, and second-degree criminal sexual conduct. Preston’s convictions were affirmed on appeal. *People v. Preston*, 2012 WL 5853223, No. 298796 (Mich. Ct. App. Oct. 30, 2012); lv. den. 829 N.W.2d 225 (Mich. 2013).

Because his petition is a “second or successive petition” within the meaning of 28 U.S.C. § 2244(b)(3)(A), this Court must direct the Clerk of the Court to transfer the case to the Court of Appeals. Preston previously filed a federal habeas corpus petition, which was denied on the merits. *Preston v. Gidley*, 2017 WL 4572336; No.14-10606 (E.D. Mich. Oct. 12, 2017); app. dismiss.

No. 17-2389 (6th Cir. Apr. 25, 2018). He has since been denied permission at least fifteen times by the Sixth Circuit to file a successive federal habeas petition. In re Preston, No. 18-1847 (6th Cir. Nov. 26, 2018); In Re Preston, No. 20-1641 (6th Cir. Dec. 8, 2020); In Re Preston, No. 21-1071 (6th Cir. May 12, 2021); In Re Preston, No. 21-2620 (6th Cir. Sep.

23, 2021); In Re Preston, No. 22-1072 (6th Cir. July 28, 2022); In Re Preston, No. 22-1723 (6th Cir. Sept. 28, 2022); In Re Preston, No. 24-1010 (6th Cir. Feb. 13, 2024); In Re Preston, No. 24-1052 (6th Cir. Feb. 21, 2024); In Re Preston, No. 24-1067 (6th Cir. Mar. 7, 2024); In Re Preston, No. 24-1232 (6th Cir. Apr. 17, 2024); In Re Preston, No. 24- 1521 (6th Cir.

Nov. 1, 2024); In Re Preston, No. 24-1597 (6th Cir. Nov. 1, 2024); In Re Preston, No. 25-1045 (6th Cir. Mar. 20, 2025); In Re Preston, No. 25-1162 (6th Cir. Mar. 20, 2025); In Re Preston, No. 25-1741 (6th Cir. Dec. 23, 2025).

Before filing a habeas petition challenging a conviction previously challenged in a prior habeas petition, the petitioner must “move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Federal district courts lack jurisdiction to consider successive habeas petitions absent preauthorization from the court of appeals.

Franklin v. Jenkins, 839 F.3d 465, 473 (6th Cir. 2016) (citing 28 U.S.C. § 2244(b)(3)). When a petitioner files a second or successive habeas petition in the district court without preauthorization, the district court must transfer the case to the court of appeals. See 28 U.S.C. § 1631; In re Sims, 111 F.3d 45, 47 (6th Cir. 1997).

Here, Preston has not obtained appellate authorization to file a successive habeas petition as required under 28 U.S.C. § 2244(b)(3)(A). Accordingly, It is ORDERED that the Clerk of the Court shall transfer this case to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631 for a determination of whether Petitioner may file a successive petition.

SO ORDERED. Dated: December 29, 2025 s/Robert J. White Robert J. White United States District Judge