

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
NORTH CAROLINA, CHARLOTTE DIVISION

Walter T. Gause v. Leslie Cooley Dismukes

Gause · No. 3:23-cv-00660-MR · Decided December 10, 2025

SUMMARY

The United States District Court for the Western District of North Carolina construed Walter T. Gause's filing under the All Writs Act as a petition for habeas corpus under 28 U.S.C. § 2254. The court dismissed the petition as an unauthorized successive petition because Gause had not obtained authorization from the Fourth Circuit under 28 U.S.C. § 2244(b)(3)(A), declined to issue a certificate of appealability, and directed that Leslie Cooley Dismukes be substituted as respondent.

CASE DETAILS

COURT	United States District Court for the Western District of North Carolina, Charlotte Division
WRITING FOR THE COURT	Martin Reidinger
JURISDICTION	United States District Court for the Western District of North Carolina, Charlotte Division
DECIDED	December 10, 2025
DOCKET	3:23-cv-00660-MR
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner filed a pro se submission styled as a petition under the All Writs Act. The district court construed it as a petition for habeas corpus under 28 U.S.C. § 2254 and dismissed it as an unauthorized successive petition.
STANDARD OF REVIEW	Under Rule 4 of the Rules Governing Section 2254 Cases, the district court must dismiss a habeas petition when it plainly appears from the petition and any exhibits that the petitioner is not entitled to relief.
PRECEDENTIAL VALUE	Unknown
PARTIES	Walter T. Gause v. Leslie Cooley Dismukes, Secretary, North Carolina Department of Adult Correction

TOPICS

federal habeas corpus

successive petitions

subject matter jurisdiction

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PRACTICE AREAS

Federal habeas corpus

Post-conviction relief

Federal civil procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether the filing should be construed as a petition for writ of habeas corpus under 28 U.S.C. § 2254.
2. Whether the petition was an unauthorized successive habeas petition requiring dismissal because Petitioner had not obtained authorization from the appropriate court of appeals.
3. Whether a certificate of appealability should issue.

HOLDINGS

1. The court construed Petitioner's submission styled under the All Writs Act as a petition for writ of habeas corpus under 28 U.S.C. § 2254.
2. A second or successive § 2254 petition may not be filed in the district court without prior authorization from the appropriate court of appeals; absent that authorization, the district court lacks jurisdiction and must dismiss the petition.
3. The court declined to issue a certificate of appealability.

KEY QUOTATIONS

“Before a second or successive application ...is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” (II)

“This Court is therefore without jurisdiction to review the merits of the instant § 2254 petition.” (II)

FACTUAL BACKGROUND

Walter Timothy Gause is a North Carolina prisoner serving sentences imposed after convictions for robbery with a dangerous weapon, assault with a deadly weapon inflicting serious injury, and conspiracy to commit robbery with a dangerous weapon. He had previously challenged the same state-court judgment through a § 2254 petition that was denied on the merits and through two later petitions dismissed as unauthorized successive petitions. In the present filing, he again sought to challenge the Mecklenburg County judgment without showing that the Fourth Circuit had authorized a successive application.

PROCEDURAL HISTORY

Gause was convicted in Mecklenburg County Superior Court and pursued direct appeal and state post-conviction relief. He previously filed a § 2254 petition that was denied on the merits, followed by two additional § 2254 proceedings that were dismissed as unauthorized successive petitions. The present filing was an exact duplicate of a document intended for filing in an earlier habeas action, but the Clerk opened a separate case. The district court construed the filing as a § 2254 petition and dismissed it for lack of appellate authorization.

DISPOSITION

dismissed

CASES CITED

- State v. Gause, 772 S.E.2d 265, 2015 WL 1529828, at *1-2 (N.C. Ct. App. 2015) (unpublished)
- Gause v. Perry, No. 3:16-cv-00631-FDW, 2017 WL 581331, at *1 (W.D.N.C. Feb. 13, 2017)
- Gause v. Perry, 697 F. App'x 220 (4th Cir. 2017)
- Gause v. Hooks, Case No. 3:20-cv-00306-MR, 2020 WL 6689358, at *2-3 (W.D.N.C. Nov. 12, 2020)
- Gause v. Hooks, 837 F. App'x 1002 (4th Cir. 2021) (mem.) (unpublished)
- Gause v. Isha, Case No. 3:23-cv-00382-MR, Document 12 (W.D.N.C. Nov. 7, 2023)
- Burton v. Stewart, 549 U.S. 147, 153 (2007)
- Miller-El v. Cockrell, 537 U.S. 322, 338 (2003)
- Slack v. McDaniel, 529 U.S. 473, 484 (2000)

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