

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

post-conviction relief

appellate procedure

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)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION CIVIL CASE NO. 3:23-cv-00660-MR WALTER T. GAUSE,)) Petitioner,)) MEMORANDUM OF vs.) DECISION AND ORDER) LESLIE COOLEY DISMUKES1,) Secretary, North Carolina) Department of Adult Correction,)) Respondent.) _____) THIS MATTER is before the Court on the pro se hand-written submission made by Walter T. Gause (herein “Petitioner”) entitled “Petition All Writ Act, 28 U.S.C. 1651 et seq[.]” filed on October 5, 2023.

[Doc. 1]. I. PROCEDURAL BACKGROUND Walter Timothy Gause is a prisoner of the State of North Carolina, who was convicted on February 20, 2014, in Mecklenburg County Superior Court 1 Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts requires that “the petition must name as respondent the state officer who has custody” of the petitioner.

Rule 2(a), 28 U.S.C. foll. § 2254. In North Carolina, the Secretary of the Department of Adult Correction is the custodian of all state inmates. N.C. Gen. Stat. § 148-4 (2023). Accordingly, Leslie Cooley Dismukes, the current Secretary of the North Carolina Department of Adult Correction (“NCDAC”), is now the proper Respondent. of robbery with a dangerous weapon, assault with a deadly weapon inflicting serious injury, and conspiracy to commit robbery with a dangerous weapon.

State v. Gause, 772 S.E.2d 265, 2015 WL 1529828, at *1-2 (N.C. Ct. App. 2015) (unpublished). The trial court sentenced the Petitioner to 146 to 185 months imprisonment for the robbery and conspiracy convictions, and 59 to 80 months for the assault conviction. Id. After his direct appeal,

and after seeking post-conviction relief in the state's courts, the Petitioner filed a Petition for Writ of Habeas Corpus in this Court on August 23, 2016.

Gause v. Perry, No. 3:16-cv-00631-FDW, 2017 WL 581331, at *1 (W.D.N.C. Feb. 13, 2017). On February 13, 2017, the Court entered an Order granting the Respondent's Motion for Summary Judgment and denying the Petition for Writ of Habeas Corpus. *Id.* The Petitioner appealed, and the Fourth Circuit Court of Appeals dismissed the appeal on September 20, 2017. *Gause v. Perry*, 697 F. App'x 220 (4th Cir.

2017). On August 2, 2020, the Petitioner filed a second Petition for Writ of Habeas Corpus, which this Court dismissed as an unauthorized, successive habeas petition. *Gause v. Hooks*, Case No. 3:20-cv-00306-MR, 2020 WL 6689358, *2-3 (W.D.N.C. Nov. 12, 2020) [Docs. 1, 12].

The Petitioner filed a Notice of Appeal, which the appellate court dismissed on February 26, 2021. *Gause v. Hooks*, 837 Fed. App'x 1002 (4th Cir. 2021) (Mem.) (unpublished). On June 23, 2023, Petitioner commenced another action in this Court with a filing entitled "All Writ Act, pursuant 28 U.S.C. § 1651(a)," which the Court construed as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The Court dismissed that action as having been brought pursuant to an unauthorized, successive habeas petition. *Gause v. Isha*, Case No. 3:23-cv-00382-MR, Document 12, Nov. 7, 2023. On October 5, 2023, the Clerk of Court's office opened this habeas case with a pro se hand-written filing made by Petitioner entitled, "Petition All Writ Act, 28 U.S.C. 1651 et seq." [Doc.

1]. As indicated on the front page of this petition, the document was meant to be filed, and in fact was filed as Document 90, in this Court's case number 3:16-cv-00631-FDW. In case number 3:16-cv-00631-FDW, the first habeas action brought by this Petitioner, the Court did not address Petitioner's Document 90, the exact duplicate of which was used to commence this action.

Like it did in Case Number 3:23-cv-00382-MR, the Court will construe Petitioner's filing in the present matter as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. II. DISCUSSION In reviewing a § 2254 petition, the Court is guided by Rule 4 of the Rules Governing Section 2254 Cases, which directs the district court to dismiss a petition when it plainly appears from the petition and any exhibits that the petitioner is entitled to no relief.

Rule 4, 28 U.S.C.A. foll. § 2254. Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a petitioner's ability to attack the same criminal judgment in multiple collateral proceedings is expressly limited.

Under the AEDPA, "[b]efore 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." 28 U.S.C. § 2244(b)((3)(A). Failure to obtain authorization from the

appellate court deprives the district court of jurisdiction to consider the petitioner's successive petition.

Burton v. Stewart, 549 U.S. 147, 153 (2007). This Court previously addressed three § 2254 petitions filed by the Petitioner. The first was denied on the merits with summary judgment entered in favor of the Respondent. Gause v. Perry, No. 3:16-cv-00631- FDW, 2017 WL 581331, at *1 (W.D.N.C. Feb. 13, 2017).

The second was dismissed as an unauthorized successive petition. Gause v. Hooks, Case No. 3:20-cv-00306-MR, 2020 WL 6689358, *2-3 (W.D.N.C. Nov. 12, 2020) [Docs. 1, 12]. The third was dismissed as an unauthorized successive petition. Gause v. Isha, Case No. 3:23-cv-00382-MR, Nov. 17, 2023. [Doc. 12].

As such, the pending § 2254 petition, in which Petitioner once again seeks to challenge his Mecklenburg County, North Carolina, judgment and conviction, is successive. The Petitioner has not shown that he obtained authorization from the appellate court prior to filing his successive habeas petition as required by 28 U.S.C. § 2244(b)(3)(A). This Court is therefore without jurisdiction to review the merits of the instant § 2254 petition.

As such, the § 2254 petition shall be dismissed. III. CONCLUSION For the reasons stated herein, the Petitioner is entitled to no relief. The § 2254 petition shall be dismissed as an unauthorized successive petition. Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, the Court declines to issue a certificate of appealability. 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 338 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 473, 484 (2000) (when relief is denied on procedural grounds, a petitioner must establish both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right).

ORDER IT IS, THEREFORE, ORDERED that: 1. The Petition for Writ of Habeas Corpus [Doc. 1] is DISMISSED as an unauthorized successive petition under 28 U.S.C. § 2244(b)(3). 2. The Clerk of Court is respectfully directed to substitute Leslie Cooley Dismukes, Secretary of the North Carolina Department of Adult Correction, as the Respondent in this action and close this case.

3. Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, the Court DECLINES to issue a certificate of appealability. IT IS SO ORDERED. Signed: December 10, 2025 3 Reidinger
ee Chief United States District Judge AS