

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF  
GEORGIA, VALDOSTA DIVISION

Edward Lee Ham, Jr. v. Attorney General, State of Georgia

Ham · No. 7:24-CV-00087-WLS-ALS · Decided March 3, 2026

SUMMARY

The United States District Court for the Middle District of Georgia dismissed Edward Lee Ham, Jr.’s habeas petition challenging his 1993 Georgia conviction. The court held that the petition was second or successive under 28 U.S.C. § 2244(b)(3)(A) and that Ham had not obtained authorization from the Eleventh Circuit, depriving the district court of jurisdiction.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Middle District of Georgia, Valdosta Division                                                                                                                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | W. Louis Sands, Sr. Judge                                                                                                                                                                                                                                                                                                                                                                                           |
| JURISDICTION          | United States District Court for the Middle District of Georgia, Valdosta Division                                                                                                                                                                                                                                                                                                                                  |
| DECIDED               | March 3, 2026                                                                                                                                                                                                                                                                                                                                                                                                       |
| DOCKET                | 7:24-CV-00087-WLS-ALS                                                                                                                                                                                                                                                                                                                                                                                               |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                                                                                                                                                                                           |
| PROCEDURAL POSTURE    | Petitioner filed a second federal habeas corpus petition under 28 U.S.C. § 2254 challenging the same 1993 Georgia conviction previously challenged in an earlier federal habeas action. The district court dismissed the petition without prejudice for lack of jurisdiction because Petitioner had not obtained authorization from the Eleventh Circuit to file a second or successive petition.                   |
| STANDARD OF REVIEW    | Under Rule 4 of the Rules Governing Section 2254 Cases, the court must promptly examine a habeas petition and dismiss it if it plainly appears from the petition and attached exhibits that the petitioner is not entitled to relief. A district court's authority to consider a second or successive habeas petition is also subject to the jurisdictional authorization requirement of 28 U.S.C. § 2244(b)(3)(A). |
| PRECEDENTIAL VALUE    | Unknown; the source metadata identifies the precedential status as Unknown.                                                                                                                                                                                                                                                                                                                                         |

## PARTIES

Edward Lee Ham, Jr. v. Attorney General, State of Georgia

## TOPICS

federal habeas corpus

successive petitions

subject matter jurisdiction

post-conviction relief

appellate procedure

## PRACTICE AREAS

federal habeas corpus

post-conviction relief

appellate procedure

## QUESTIONS PRESENTED

1. Whether the current § 2254 petition was a second or successive habeas petition because it challenged the same state-court judgment as Petitioner's earlier federal habeas petition.
2. Whether the district court had jurisdiction to consider the second or successive petition absent prior authorization from the Eleventh Circuit under 28 U.S.C. § 2244(b)(3)(A).

## HOLDINGS

1. The current § 2254 petition was a second or successive habeas petition because it challenged the same state-court judgment as Petitioner's earlier federal habeas petition, which had been dismissed as untimely.
2. The district court lacked jurisdiction to consider the merits of the second or successive petition because Petitioner had not obtained authorization from the Eleventh Circuit before filing it.

## KEY QUOTATIONS

*“Before a second or successive application [for a writ of habeas corpus] . . . 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.”*

*“This failing operates as a jurisdictional bar that precludes this Court from considering the merits of the current petition.”*

*“Accordingly, it is ORDERED that the instant Petition be DISMISSED without prejudice because the District Court lacks jurisdiction to consider a second habeas petition that has not been permitted by the appellate court.”*

## FACTUAL BACKGROUND

Petitioner challenges a 1993 Thomas County, Georgia conviction for two counts of aggravated sodomy and two counts of child molestation. He is not incarcerated but is serving probation for that conviction. He previously filed a federal habeas petition challenging the same judgment, and that petition was dismissed as untimely.

## PROCEDURAL HISTORY

Petitioner previously filed a § 2254 petition challenging the same Thomas County Superior Court conviction. The earlier petition was dismissed as untimely. In this action, the district court determined that the current petition was second or successive and that Petitioner had not obtained the authorization required by 28 U.S.C. § 2244(b)(3)(A). The court dismissed the petition without prejudice and directed the Clerk to provide the Eleventh Circuit application form for authorization.

#### DISPOSITION

dismissed

#### CASES CITED

- Hamm v. State, 214 Ga. App. 705, 448 S.E.2d 773 (1994)
- Ham v. Owens, 7:10-cv-40-HL-TQL (M.D. Ga. Feb. 9, 2011)
- Maleng v. Cook, 490 U.S. 488, 490 (1989) (per curiam)
- Llovera-Linares v. Florida, 559 F. App'x 949, 951 (11th Cir. 2014) (per curiam)
- Stacey v. Warden, Appalachee Corr. Inst., 854 F.2d 401, 403 (11th Cir. 1988)
- Duvalon v. Florida, 691 F.2d 483, 485 (11th Cir. 1982) (per curiam)
- Jones v. Cunningham, 371 U.S. 236, 243 (1963)
- Hutcherson v. Riley, 468 F.3d 750, 752, 755 (11th Cir. 2006)
- Gipson v. Sec'y, Dep't of Corr., 784 F. App'x 683, 683 (11th Cir. 2019) (per curiam)
- Holland v. Sec'y, Fla. Dep't of Corr., 941 F.3d 1285, 1287 (11th Cir. 2019)
- Bolin v. Sec'y, Fla. Dep't of Corr., 628 F. App'x 728, 730 (11th Cir. 2016) (per curiam)
- Hubbard v. Campbell, 379 F.3d 1245, 1247 (11th Cir. 2004)

#### OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION EDWARD LEE HAM, JR.,: Petitioner,: v.: CASE NO.: 7:24-CV-00087-  
WLS-ALS ATTORNEY GENERAL,: STATE OF GEORGIA,: Respondent.: ORDER Petitioner Edward Lee Ham, proceeding pro se, has filed a petition for a writ of habeas corpus in which he challenges his 1993 criminal conviction in the Thomas County Superior Court for two counts of aggravated sodomy<sup>1</sup> and two counts of child molestation.

(Doc. 1). Petitioner is not presently incarcerated in any correctional facility but is on probation for this conviction.<sup>2</sup> (Id. at 1, 9). For purposes of this dismissal alone, Petitioner will be allowed to proceed without prepayment of the \$5.00 filing fee. <sup>1</sup> Although Petitioner states on page one of his petition that he was convicted of two counts of aggravated child molestation, a review of Petitioner's attached record from the Superior Court of Thomas County (page 12), Petitioner's appeal of his conviction to the Georgia Court of Appeals (Hamm v. State, 214 Ga. App.

705, 448 S.E.2d 773 (1994)) and his previous federal habeas petition (*Ham v. Owens*, 7:10-cv-40-HL-TQL (M.D. GA. Feb. 9, 2011)) reveals that he was convicted of two counts of aggravated sodomy, not aggravated child molestation as well as for two additional counts of child molestation. 2 “The federal habeas statute gives the United States district courts jurisdiction to entertain petitions for habeas relief only from persons who are ‘in custody’ in violation of the Constitution or laws or treaties of the United States.” *Maleng v. Cook*, 490 U.S. 488, 490 (1989) (per curiam) (citing 28 U.S.C. § 2241(c)(3)) (emphasis in original).

The United States Supreme Court has interpreted this language “as requiring that the habeas petitioner be ‘in custody’ under the conviction or sentence under attack at the time his petition is filed.” *Id.* at 490-91.

The “in-custody” requirement is jurisdictional. *Llovera-Linares v. Florida*, 559 F. App’x 949, 951 (11th Cir. 2014) (per curiam) (citing *Stacey v. Warden, Appalachee Corr. Inst.*, 854 F.2d 401, 403 (11th Cir. 1988)). A petitioner does not necessarily need to be incarcerated to meet the “in custody” requirement, however; “[i]n the context of habeas proceedings, the ‘in custody’ requirement may also be met where a petitioner is on probation, parole or bail.” *Duvallon v. Florida*, 691 F.2d 483, 485 (11th Cir.

1982) (per curiam) (citing *Jones v. Cunningham*, 371 U.S. 236, 243 (1963)). This matter is before the Court pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. Rule 4 provides that [t]he clerk must forward the petition to a judge under the court’s assignment procedure, and the judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.

A review of the Court’s records reveals that Petitioner previously filed a § 2254 petition in this Court challenging his 1993 Thomas County Superior Court conviction for two counts of aggravated sodomy and two counts of child molestation. See Doc. 1 in *Ham v. Owens*, 7:10- cv-40-HL-TQL (M.D. GA. Feb. 9, 2011).

In that civil action, the District Court adopted the Report and Recommendation of the United States Magistrate Judge and dismissed Petitioner’s federal habeas corpus petition because it was untimely. See Doc. 21 in *Ham v. Owens*, 7:10-cv- 40-HL-TQL (M.D. GA. Feb. 9, 2011). Pursuant to 28 U.S.C. § 2244(b)(3)(A), “[b]efore a second or successive application [for a writ of habeas corpus]... 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.” The instant petition challenges the legality of the same state court judgment that was the subject of the first § 2254 action filed by Petitioner.

Furthermore, Petitioner's previous petition qualified as a first petition for the purpose of determining successor status because the Court dismissed it as untimely. *Hutcherson v. Riley*, 468 F.3d 750, 752, 755 (11th Cir. 2006); *Gipson v. Sec'y, Dep't of Corr.*, 784 F. App'x 683, 683 (11th Cir. 2019) (per curiam) (citation omitted) (upholding district court's dismissal of habeas petition as "second or successive because it challenged the same judgment at issue in his first § 2254 petition, which was denied as time-barred.").

The current petition is, therefore, second or successive. It does not appear, and Petitioner does not show, that he obtained the requisite permission from the Eleventh Circuit Court of Appeals prior to filing this petition. This failing operates as a jurisdictional bar that precludes this Court from considering the merits of the current petition. See § 2244(b)(3)(A); *Holland v. Sec'y Fla. Dep't of Corr.*, 941 F.3d 1285, 1287 (11th Cir.

2019) (finding that the district court is without jurisdiction to consider a second or successive petition on the merits and must dismiss it). Accordingly, it is ORDERED that the instant Petition be DISMISSED without prejudice because the District Court lacks jurisdiction to consider a second habeas petition that has not been permitted by the appellate court.<sup>3</sup> If Petitioner wishes to pursue another federal habeas application, he should do so by seeking permission from the Eleventh Circuit Court of Appeals before filing any more habeas petitions with this Court.

The Clerk is DIRECTED to furnish Petitioner with the application form required by the Eleventh Circuit for a petitioner to seek a second or successive habeas petition ("28 U.S.C. § 2244(b) Application"). SO ORDERED, this 3rd day of March 2026. /s/ W. Louis Sands W. LOUIS SANDS, SR. JUDGE UNITED STATES DISTRICT COURT 3 "[A] dismissal of a successive habeas petition for lack of subject-matter jurisdiction does not constitute a 'final order in a habeas proceeding' for purposes of 28 U.S.C. § 2253(c)....

Instead, such a dismissal is a 'final decision' pursuant to 28 U.S.C. § 1291 and a [Certificate of Appealability] is thus 'unnecessary....'" *Bolin v. Sec'y, Fla. Dep't of Corr.*, 628 F. App'x 728, 730 (11th Cir. 2016) (per curiam) (quoting *Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004) (affirming dismissal of successive habeas petition for lack of subject-matter jurisdiction)).

Accordingly, the Court will not address whether Petitioner has met the standards for issuance of a Certificate of Appealability.