

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

May 8, 2008

No. 07-10772
Summary Calendar

Charles R. Fulbruge III
Clerk

TIMOTHY RANDOLPH WALLACE

Petitioner-Appellant

v.

BRAD LIVINGSTON

Respondent-Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:07-CV-1112

Before SMITH, BARKSDALE, and ELROD, Circuit Judges.

PER CURIAM:*

Timothy Randolph Wallace, Texas prisoner # 894160, was convicted in 1999 of aggravated robbery with a deadly weapon and was sentenced to 37 years in prison. Wallace appeals the dismissal of his 28 U.S.C. § 2254 habeas corpus application challenging that conviction. After Wallace filed his § 2254 application, the district court administratively closed the case and unfiled the documents because Wallace had failed to obtain permission to file the case as

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

was required by an earlier order of that court in *Wallace v. Cockrell*, No. 3:02-CV-1807 (N.D. Tex. Mar. 27, 2003).

This § 2254 application was not Wallace's first, and the sole claim raised in the current application was raised in Wallace's earlier application. Thus, the current application was successive, see *In re Cain*, 137 F.3d 234, 235 (5th Cir. 1998), but Wallace never obtained authorization to file it as required by 28 U.S.C. § 2244(b)(3)(A). Accordingly, the district court was correct to dismiss it. See *id.*; *United States v. Key*, 205 F.3d 773, 774 (5th Cir.2000) (holding that a district court lacks jurisdiction to entertain an unauthorized successive application). We affirm the dismissal on that alternative basis. See *United States v. Early*, 27 F.3d 140, 142 (5th Cir. 1994) (recognizing that denial of unauthorized motion may be affirmed on alternative basis of lack of jurisdiction).

In light of the frivolous nature of this appeal and the injunction imposed by the district court, Wallace is hereby warned that the filing of frivolous, repetitive, or otherwise abusive filings will invite the imposition of sanctions, including dismissal, monetary sanctions, and/or restrictions on his ability to file pleadings in this court and any court subject to this court's jurisdiction.

AFFIRMED; SANCTION WARNING ISSUED.