

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT  
AT DANVILLE, VA

FILED  
for Roanoke  
FEB 14 2013

JULIA C. DUDLEY, CLERK  
BY:

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JEROME MALLORY,  
Petitioner,

Civil Action No. 7:13 -cv-00043

v.

MEMORANDUM OPINION

DIRECTOR OF THE  
DEPARTMENT OF CORRECTIONS,  
Respondent.

By: Hon. Jackson L. Kiser  
Senior United States District Judge

Jerome Mallory, a Virginia inmate proceeding pro se, filed a motion to vacate or correct sentence, which I construe as a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging his August 2009 judgment entered by the Circuit Court of the County of Louisa for second degree murder, grand larceny, and breaking and entering. Court records indicate that petitioner previously filed a § 2254 petition about the same convictions in Mallory v. Director of the Department of Corrections, Civil Action No. 7:12-cv-00363 (W.D. Va. Jan. 3, 2013). Thus, petitioner's current petition is a subsequent one, falling under the prohibition in 28 U.S.C. § 2244(b) against a second or successive petition. Pursuant to this section, a federal district court may consider a second or successive § 2254 petition only upon specific certification from a United States Court of Appeals that claims in the subsequent petition meet certain criteria. 28 U.S.C. § 2244(b). Because petitioner has not submitted any evidence that he has obtained such certification by the Fourth Circuit Court of Appeals, I dismiss the petition without prejudice as successive. Based upon the finding that the petitioner has not made the requisite substantial showing of a denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability is denied. The Clerk is directed to send copies of this Memorandum Opinion and the accompanying Order to petitioner.

ENTER: This 14<sup>th</sup> day of February, 2013.

  
Senior United States District Judge