

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LARRY HARRIS,

Petitioner,

v.

Case No. 09-13944
Honorable David M. Lawson

GARY J. CAPELLO, Warden,

Respondent.

OPINION AND ORDER SUMMARILY DISMISSING THE PETITIONER'S CASE

The petitioner, Larry Harris, a Michigan prisoner, seeks the issuance of a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his application, the petitioner challenges his 2004 Wayne County, Michigan circuit court convictions for first-degree murder, Mich. Comp. Laws § 750.316, assault with intent to commit great bodily harm less than murder, Mich. Comp. Laws § 750.84, and possession of a firearm during the commission of a felony, Mich. Comp. Laws § 750.227b, for which he was sentenced to life imprisonment without the possibility of parole, a concurrent term of five to ten years imprisonment, and a consecutive term of two years imprisonment, respectively.

The petitioner has already filed a habeas action challenging the same convictions with this Court, which is before another judge in this district. *See Harris v. McQuiggin*, Case No. 07-15219. In that case, United States District Judge Avern Cohn, upon the petitioner's motion, stayed and administratively closed the case so that the petitioner could exhaust state court remedies as to several of his habeas claims. Accordingly, the present action must be dismissed as duplicative or successive to his stayed petition. *Davis v. United States Parole Comm'n*, 870 F.2d 657, 1989 WL 25837, at *1 (6th Cir. Mar. 7, 1989) (district court may dismiss a habeas petition as duplicative of a pending habeas petition); *see also Flowers v. Trombley*, No. 06-10726, 2006 WL 724594, at *1 (E.D. Mich.

Mar. 17, 2006); *Harrington v. Stegall*, No. 02-70573, 2002 WL 373113, at *2 (E.D. Mich. Feb. 28, 2002). Should the petitioner wish to pursue the claims raised in this case, he should file a motion to re-open the habeas petition in his previously-filed case before Judge Cohn. The petitioner may not challenge the same convictions in two different habeas actions.

Accordingly, it is **ORDERED** that Mr. Harris's petition for writ of habeas corpus is **DISMISSED**. This dismissal is without prejudice to the proceedings in Case No. 07-15219.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: October 23, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 23, 2009.

s/Lisa M. Ware
LISA M. WARE