

Before me now is Flood's newest 28 U.S.C. § 2254 petition. Flood admits that he has "touched on these grounds in all of [his] filings" and that his earlier petition in 1:11-cv-32-DBH case was an effort to challenge the same conviction. See Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Docket No. 1) at 12.

Subsection (b)(3)(A) of 28 U.S.C. § 2244 provides: "Before a second or successive application permitted by this section 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). Flood has not procured this order. Moreover, he has appealed the denial of his habeas petition in 1:11-cr-32-DBH. See *Flood v. Barnhart*, No. 1:11-cr-32-DBH at Docket Nos. 34-37.

Consequently, I recommend that the court dismiss this petition without prejudice to Flood's rights to return to this forum, after securing permission to do so from the First Circuit Court of Appeals.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum and request for oral argument before the district judge, if any is sought, within fourteen (14) days after being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within fourteen (14) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 19th day of August, 2011.

/s/ John H. Rich III
John H. Rich III
United States Magistrate Judge

Petitioner

ANDREW P FLOOD

represented by **ANDREW P FLOOD**

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