

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

DARYL KEITH HOLTON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 1:05-cv-00202
	)	Phillips/Guyton
RICKY BELL, Warden,	)	(Capital Case)
	)	
Respondent.	)	

**MOTION TO DISMISS UNAUTHORIZED
PETITION FOR WRIT OF HABEAS CORPUS**

The respondent, Ricky Bell, Warden, requests that the Court dismiss the unauthorized “Petition for Writ of Habeas Corpus” filed by Federal Defender Services of Eastern Tennessee, Inc. (“FDSET”) [Doc. Entry No. 9], because FDSET lacks standing to invoke this Court’s jurisdiction on behalf of the named petitioner, Daryl Keith Holton. Because Holton has neither signed nor authorized the filing of any federal petition, FDSET is not “acting in his behalf” within the meaning of 28 U.S.C. § 2242. *See also* Rule 2(c)(5), Rules Governing Section 2254 Cases in the United States District Courts (“The petition must . . . be signed under penalty of perjury by the petitioner or by a person authorized to sign it for the petitioner under 28 U.S.C. § 2242.”) Moreover, FDSET does not allege, let alone demonstrate, that the conditions for “next friend” standing under *Whitmore v. Arkansas*, 495 U.S. 149 (1990), currently exist. In absence

of the express consent of Holton to initiate federal proceedings, FDSET lacks standing to invoke this Court's jurisdiction.

ARGUMENT AND AUTHORITY

As a general rule, the party invoking federal subject matter jurisdiction (in this case, the petitioner) bears the burden of establishing that all of the requirements necessary to establish standing to bring a lawsuit have been met. *Courtney v. Smith*, 279 F.3d 455, 459 (6th Cir. 2002) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). In *West v. Bell*, 242 F.3d 338 (6th Cir. 2001), the Sixth Circuit made clear that a necessary prerequisite for standing to file a petition for writ of habeas corpus under 28 U.S.C. § 2254 is that a state prisoner actually invoke federal jurisdiction, either personally or through a qualified "next friend" under *Whitmore*, 495 U.S. at 164-66. Thus, in order to proceed with the present suit, FDSET is required to provide this Court with "a jurisdictional basis" to assume control of the State's criminal processes through federal habeas corpus review. *West*, 242 F.3d at 343. It has plainly failed to do so and, in fact, every pleading, motion and affidavit filed by FDSET in this matter indicates that no such basis presently exists.

First, it is clear on the face of the instant "petition" that Holton has not *personally* invoked this Court's jurisdiction. The petition is signed only by attorney Stephen A. Ferrell and not by Holton. [Doc. Entry No. 9, p. 14] And, although FDSET attempts to claim representative status by virtue of this Court's July 26, 2005, appointment order

[Doc. Entry No. 5], that order, too, was obtained without the authorization and/or verification of the named party.¹ Indeed, in the motions to proceed *in forma pauperis* and for appointment of counsel, FDSET plainly stated that Daryl Holton had refused to meet or cooperate with them and had given no consent to initiate federal proceedings. [Doc. Entry No. 1, p. 1; Doc. Entry No. 3, p. 1] Further, in an affidavit executed on July 12, 2005, FDSET attorney Stephen Ferrell disclosed:

I tried to visit Mr. Holton on April 12, 2005 and June 15, 2005 at Riverbend Prison in Nashville where he is currently incarcerated. *Mr. Holton refused both of these visits.*

I wrote letters to Mr. Holton on April 14, 2005, April 22, 2005, and June 17, 2005. His only response was to send back some caselaw I had enclosed in one of my letters.

I have had no communication from Mr. Holton about his case and whether he wishes to pursue habeas relief. Mr. Holton has never told me he plans to waive his rights to pursue habeas relief.

[Doc. Entry No. 3, Exh. L] (emphasis added)

An application for a writ of habeas corpus shall be “signed and verified by the person for whose relief it is intended or by someone acting in his behalf.” 28 U.S.C. § 2242. Furthermore, Rule 2(c) of the Rules Governing Section 2254 Cases in the United States District Courts requires that the petition “shall be signed under penalty of perjury by the petitioner.” The language of § 2242 clearly anticipates that “next friend”

¹On August 3, 2005, respondent filed a Motion to Reconsider Leave to Proceed *In Forma Pauperis* and Appointing Counsel [Doc. Entry No. 7], which challenged the standing of FDSET to seek appointment to represent Holton, absent Holton’s request for such representation, in the first instance.

petitions may be necessary. But the authority of one person to apply for the writ of habeas corpus for the release of another will be recognized only when the application for the writ demonstrates: (1) why the detained person did not sign and verify the petition; and (2) the relationship and interest of the would-be “next friend.” *Weber v. Garza*, 570 F.2d 511, 513-14 (5th Cir. 1978). “The application for the writ must establish some reason satisfactory to the Court showing why the condemned prisoner did not sign and verify the petition, as well as the relationship and interest of the would-be ‘next friend.’ If this explanation is missing from a petition, the Court lacks jurisdiction to consider it.” *Hamblen v. Dugger*, 719 F.Supp. 1051, 1059-1060 (M.D. Fla. 1989).

The pleading filed in this case contains neither of the two prerequisites. Rather, in the space provided on the Form § 2254 Petition for explanation of the relationship of the signatory (if other than petitioner) to the petitioner and why the petitioner is not signing the petition, FDSET merely states: “This petition has been signed by Stephen Ferrell who has been appointed to represent Daryl Holton in this action and who is signing the petition on his behalf. See 28 U.S.C. Section 2242.” [Doc. Entry No. 9, p. 16] The explanation provided in this case is clearly insufficient to establish Holton’s inability to sign the petition or the necessity for a “next friend” or other representative to proceed in his stead. *See also Wilson v. Lane*, 870 F.2d 1250 (7th Cir. 1989) (“It is well-settled that a next-friend may not file a petition for a writ of habeas corpus on behalf of a detainee if the detainee himself could file the petition. . . . A next-friend

applicant, among other things, must therefore explain why the detainee did not sign and verify the petition. . . . If the next-friend cannot do so, ‘the court is without jurisdiction to consider the petition.’”) (quoting *Weber*, 570 F.2d at 513).

Like the attorneys in *West v. Bell*, *supra*, FDSET has failed to provide this Court with any jurisdictional basis upon which to proceed. It has provided no explanation why Holton did not sign and verify his petition, nor has it demonstrated his inability to do so on September 30, 2005, the date of filing in this case. The unsigned and unauthorized petition for writ of habeas corpus should, therefore, be dismissed for lack of standing.

CONCLUSION

For these reasons, the unauthorized “Petition for Writ of Habeas Corpus” should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2005, a copy of the foregoing **MOTION TO DISMISS UNAUTHORIZED PETITION FOR WRIT OF HABEAS CORPUS** was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

/S/ Jennifer L. Smith
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