

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Petitioner,

v.

CARLOS RAMOS-MARTINEZ,

Respondent.

Civil No. 16-2172 (ADC)
[Related to Crim. No. 01-638-3 (ADC)]

OPINION AND ORDER

Before the Court is Carlos Ramos-Martínez's ("petitioner" or "Ramos") petition for habeas corpus relief pursuant to 28 U.S.C. § 2255 ("§ 2255 motion"). **ECF No. 1**. Petitioner pleaded guilty to one count of conspiracy to distribute an excess of five kilograms of cocaine, in violation of 21 U.S.C. § 846, for which he received a sentence of 240 months of imprisonment and six years of supervised release. **Crim. No. 01-638, ECF Nos. 121, 258, 276**. Petitioner appealed the sentence, and the First Circuit Court of Appeals ("First Circuit") affirmed the same. *Id.*, **ECF Nos. 122, 189**. Petitioner filed a motion for post-conviction relief titled "Request for *Coram Novis* or *Audita Querela*," which in light of its content, the Court construed as a § 2255 motion. *Id.*, **ECF Nos. 234, 235**. Petitioner based his § 2255 motion on his assertion that "[t]he minute sheet for [his] change of plea hearing has a blank line where the entry for the courtroom interpreter would

ordinarily appear. The presiding judge¹ at the hearing did not ask[] petitioner whether he needed the services of an interpreter." *Id.*, ECF No. 234 at 7. The Court denied the petition, holding that it was tardy and did not warrant equitable tolling. *Id.*, ECF No. 235. Petitioner filed a motion seeking that the Court reconsider its denial of his § 2255 motion. *Id.*, ECF No. 247. The Court construed petitioner's motion to reconsider as a second or successive § 2255 motion and denied it because petitioner had not sought or obtained authorization from the First Circuit to file it, as required under 28 U.S.C. § 2255(h). *Id.*, ECF No. 248.

Subsequently, Ramos filed the present § 2255 motion challenging the legality of his sentence under *Johnson v. United States*, 576 U.S. ___, 135, 135 S. Ct. 2551 (2015), particularly a weapons enhancement to the sentence. **Civ. No. 16-2172, ECF No. 1.** Inasmuch as the present § 2255 motion is a second or successive one, petitioner must first obtain leave to file the same from the First Circuit Court of Appeals in order for the Court to have jurisdiction to adjudicate it. *See* 28 U.S.C. § 2255(h); *Burton v. Stewart*, 549 U.S. 147 (2007).

Accordingly, the § 2255 motion at **ECF No. 1** is **DISMISSED WITHOUT PREJUDICE.**

The Clerk of Court is to enter judgment accordingly.

SO ORDERED.

At San Juan, Puerto Rico, on this 2nd day of April, 2019.

S/AIDA M. DELGADO-COLÓN
United States District Judge

¹ The hearing was presided by retired U.S. District Judge José A. Fusté. The instant case was assigned to the undersigning Judge on June 6, 2016. **Crim. No. 01-638, ECF No. 282.**