

Not Intended for Print Publication

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

JOHNNY M. BROWN,)	
)	
Petitioner,)	Case No. 7:05-CV-00707
)	
v.)	OPINION
)	
UNITED STATES OF AMERICA,)	By: James P. Jones
)	Chief United States District Judge
Respondent.)	

Johnny M. Brown, Pro Se.

The petitioner Johnny M. Brown, Reg. No. 04780-084, a federal inmate proceeding pro se, has submitted to the court a pleading that he styles as a “Petition for a Writ of Scire Facias” in which he seeks to be resentenced under *United States v. Booker*, 125 S. Ct. 738 (2005), and other precedent issued after his conviction became final. Because Brown challenges the validity of his criminal sentence,¹ I construe his pleading as a Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C.A. § 2255 (West Supp. 2005). Upon review of the petition and court records, I find that Brown’s § 2255 motion must be dismissed as successive.

¹ The writ of scire facias was abolished in the federal court system in 1937. *See* Fed. R. Civ. P. 81(b).

The court's records indicate that in 1995 a jury found Brown guilty on federal charges of conspiracy to distribute cocaine and related offenses for which he is now serving a sentence of life imprisonment. *See* Case No. 3:94-CR-00027. The United States Court of Appeals for the Fourth Circuit affirmed his convictions in 1997. In May 1999, Brown filed a § 2255 motion regarding the same conviction and sentence, Case No. 7:99-CV-00346. The court dismissed this petition by opinion and order entered June 16, 2000, finding no ground upon which Brown was entitled to relief under § 2255 and the Fourth Circuit later affirmed the judgment.

Based on the foregoing, I conclude that petitioner's current § 2255 motion is a second or subsequent one. This court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria.² *See* § 2255 para. 8. As Brown offers no indication that he has obtained certification from the court of appeals to file a second or successive § 2255 motion, I must dismiss his current action without prejudice. A separate Final Order will be entered herewith.

² To obtain certification from the Fourth Circuit, the petitioner must submit a copy of the § 2255 motion to the court of appeals, along with a motion requesting certification for the district court to review a successive § 2255 motion. *See* 28 U.S.C. § 2244 (West Supp. 2005). Petitioner may write to request a form and instructions for filing this motion at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.

ENTER: November 20, 2005

/s/ JAMES P. JONES
Chief United States District Judge