McConnico v. United States of America (INMATE 3) Doc. 2

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

WILLIAM McCONNICO,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 2:09cv418-TMH
	)	(WO)
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

O R D E R

William McConnico has filed a *pro se* pleading styled as a "Motion to Correct or Modify or Otherwise Adjust Repayment of Restitution" (Doc. No. 1), wherein he seeks modification of an order of restitution entered in his criminal case, Case No. 2:93cr122-TMH, based on his changed economic circumstances. McConnico's pleading was originally docketed as a motion to vacate, set aside or correct sentence in a civil action under 28 U.S.C. § 2255. However, 28 U.S.C. § 2255 is not a mechanism by which an order of restitution may be attacked or modified. *See Blaik v. United States*, 161 F.3d 1341, 1342 (11th Cir. 1998) ("[Section] 2255 cannot be utilized by a federal prisoner who challenges only the restitution portion of his sentence because § 2255 affords relief only to those prisoners who 'claim [ ] the right to be released' from custody.")

Accordingly, the Clerk of this court is hereby DIRECTED to:

1. Docket McConnico's "Motion to Correct or Modify or Otherwise Adjust

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Repayment of Restitution" in his criminal case, Case No. 2:93cr122-TMH, as a "*Motion under 18 U.S.C. § 3664(k) to Modify the Restitution Payment Schedule Based on Changed Economic Circumstances*."

2. Strike the same motion from the instant case, Civil Action No. 2:09cv418-TMH.

3. Close Civil Action No. 2:09cv418-TMH.

Done this 5th day of August, 2010

/s/Wallace Capel, Jr.
WALLACE CAPEL, JR.
UNITED STATES MAGISTRATE JUDGE