

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

LORENZO RAINER,)
)
 Petitioner,)
)
 vs.) CASE NO. 2:14-cv-624-WHA
)
 UNITED STATES OF AMERICA,) (WO)
)
 Respondent.)

ORDER

This case is before the court on the Recommendation of the Magistrate Judge (Doc. #5), entered January 12, 2015, and the Petitioner's Objection (Doc. #8), filed on January 26, 2015.

Rainer objects to the Magistrate Judge's Recommendation finding his § 2255 motion filed in June 2014 to be successive. He maintains that because he was re-sentenced in October 2014 by a Federal District Court in the Northern District of Georgia -- which granted his 28 U.S.C. § 2241 habeas petition seeking relief under the "savings clause" in § 2255(e) -- that there is a new "judgment" in his case, making his § 2255 motion a first motion challenging the judgment. He cites the Supreme Court's holding in *Magwood v. Patterson*, 561 US 320 (2010), to support this argument. *Magwood*, however, does not apply here because Rainer's § 2255 motion in this case was filed in June 2014, before the Georgia Federal Court re-sentenced him (in Oct. 2014). He was in fact challenging his original judgment of conviction in this June 2014 § 2255 motion, and this was his second § 2255 motion challenging that judgment.

Rainer has another § 2255 motion pending in this court, which he filed in November 2014 (Civil Action 2:14-cv-01136-WKW-SRW), after the Georgia Federal Court re-sentenced

him. To the extent he challenges in that later action the intervening judgment that includes his re-sentencing, that § 2255 motion may well not be successive in light of *Magwood*.

Following an independent evaluation and de novo review of the file in this case, this court concludes that the Magistrate Judge correctly determined that the § 2255 motion Rainer filed in the instant case, in June 2014, is a successive § 2255 motion. It did not attack the October 2014 judgment, as it had not been entered when this § 2255 motion was filed; it attacked his original judgment of conviction. Moreover, Rainer never amended the § 2255 motion in this case. It is Rainer's § 2255 motion filed in Nov. 2014 that is possibly not successive.

Therefore, it is hereby ORDERED as follows:

1. Petitioner's Objection is OVERRULED.
2. The court ADOPTS the Recommendation of the Magistrate Judge.
3. This § 2255 motion is DISMISSED, as the Petitioner has failed to obtain the requisite order from the Eleventh Circuit Court of Appeals authorizing this court to consider a successive § 2255 motion.

DONE this 28th day of January, 2015.

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE