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U.S. DISTRICT COURT
N.D. OF ALABAMA

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

NATHANIEL JONES,	)	
	)	
Movant,	)	
	)	
v.	)	**Case No.: 2:17-cv-08003-VEH**
	)	
UNITED STATES OR AMERICA,	)	
	)	
Respondent.	)	
	)	

MEMORANDUM OPINION

On February 2, 2017, the movant, Nathaniel Jones (hereinafter "Jones"), filed, in the companion criminal case, a document entitled "Motion To Dismiss for Lack of Jurisdiction." (Doc. 69 in 2:02-cr-0405-VEH). In that Motion, Jones argues that the sentencing court[1] lacked "jurisdiction" to apply a Section 851 enhancement to him. Because the Motion attacks the sentence imposed, I determined that it necessarily was brought pursuant to 28 U.S.C. § 2255 and ordered that the Motion be termed in the companion criminal case and that the Clerk of Court open a case under that code section and docket the Motion in that case. (Doc. 70 in 2:02-cr-0405-VEH). The Clerk of Court has done as directed, and

[1]The sentencing judge has retired and, on May 12, 2016, this case was reassigned to the undersigned. (*See* docket entry dated 6/5/2016).

this is that action. I now address the Motion and find, as explained below, that because it is a "second or successive" motion under Section 2255, and because Jones has not received permission from the Eleventh Circuit Court of Appeals to file it, it is due to be dismissed.

I.

It is well-settled law that second or successive petitions (SSP) under section 2255 must be dismissed unless certified by

> a panel of the appropriate court of appeals to contain (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h). "The bar on second or successive motions is jurisdictional." *In re Morgan*, 717 F.3d 1186, 1193 (11th Cir. 2013) (Pryor, J., concurring in denial of rehearing en banc). "Whether a petition is second or successive depends on 'the judgment challenged.'" *Patterson v. Sec'y, Florida Dep't of Corr.*, 812 F.3d 885, 898 (11th Cir. 2016) (Pryor, J., dissenting) (quoting *Insignaries v. Sec'y, Fla. Dept. of Corrections*, 812 F.3d 885, 898 (11th Cir. 2014)).

The Motion is a SSP because it challenges the same judgment as Jones's

prior motion under 2255.[2] Accordingly, he cannot proceed in this court unless he first receives permission to do so from the United States Court of Appeals. Finding no such permission, the motion is due to be **DENIED** for want of jurisdiction.

II

A prisoner seeking to vacate his judgment has no absolute entitlement to appeal a district court's denial of his motion. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a certificate of appealability (COA). *Id*. "A [COA] may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right." *Id*. at § 2253(c)(2). To make such a showing, a petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," *Tennard v. Dretke*, 542 U.S. 274, 282 (2004) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)), or that "the issues presented were 'adequate to deserve encouragement to proceed further.'" *Miller–El v. Cockrell*, 537 U.S. 322, 335–36 (2003) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n. 4 (1983)). When a district court dismisses a federal *habeas* petition on procedural grounds without reaching the underlying constitutional

[2] In fact, this is Jones's third § 2255 motion. *See* Motion To Vacate under 28 U.S.C. 2255, filed February 21, 2006 (Doc. 1 in Civil Action CV-06-J-8010-S); Motion To Rule in Favor of Civil Rule 60(b), filed May 12, 2016, converted to Motion under § 2255 (Doc. 1 in Civil Action 2:16-CV-8039).

claim, a COA should issue only when a petitioner shows "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484. Because the instant motion is clearly a successive section 2255 motion, Jones cannot make the requisite showing. Finally, because Jones is not entitled to a COA, he is not entitled to appeal *in forma pauperis*.

DONE this 6th day of February, 2017.

VIRGINIA EMERSON HOPKINS
United States District Judge