

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION**

**RICHARD PATTON, JR.,** )  
 )  
 **Movant,** )  
 )  
 **v.** )  
 )  
 **UNITED STATES OR AMERICA,** )  
 )  
 **Respondent.** )  
 )

**Case No.: 1:17-cv-08039-VEH  
(7:11-CR-289-VEH-HGD)**

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**MEMORANDUM OPINION**

Richard Patton, Jr. (hereinafter “Patton”) has filed with the Clerk of this Court a “Motion To Vacate Void Judgment” (doc. 1), which the Court construes as having been filed pursuant to 28 U.S.C. §2255. (See Order, doc. 2). Patton seeks to vacate the sentence imposed upon him on January 19, 2012, in case # 7:11-cr-00289-VEH. Pursuant to an order of this court, on December 6, 2017, the Government filed a Response (doc. 7) to the Motion.

In its Response, the Government asserted that this is Patton's second motion under Section 2255, that it has been brought without permission of the Eleventh Circuit Court of Appeals, and that, accordingly, this court lacks jurisdiction. The Government asks the court to dismiss the Motion on that basis.

Having reviewed the parties' pleadings and the arguments made therein, as well as the applicable law pertaining thereto, the undersigned finds that this is Patton's second motion under § 2255 and therefore, this court lacks jurisdiction to proceed. "[A] second or successive [§ 2255] motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals." 28 U.S.C. § 2255(h). *See also* 28 U.S.C. § 2244(b)(3)(A). *Darby v. Hawk-Sawyer*, 405 F.3d 942, 944–45 (11th Cir.2005); *Farris v. U.S.*, 333 F.3d 1211 (2003) (same); *United States v. Harris*, 546 Fed. Appx. 898, 900 (11th Cir.2013) (unpublished opinion) ("A district court lacks the jurisdiction to hear a second or successive § 2255 motion absent authorization from a court of appeals.") (citations omitted).

Because this court lacks jurisdiction to entertain the instant § 2255 Petition, this case will be dismissed without prejudice to allow Patton the opportunity to seek authorization from the Eleventh Circuit to file a second or successive § 2255 motion.

### **ORDER**

**ACCORDINGLY**, it is **ORDERED** that:

1. The pending motion to vacate, set aside, or correct sentence (Doc. 1) is **DISMISSED**, without prejudice, for lack of jurisdiction.

2. The Clerk is directed to term all pending motions within this case file and the associated criminal case, *United States v. Patton*, 7:11-cr-00289-VEH.

**DONE** and **ORDERED** this the 7th day of December, 2017.

A handwritten signature in black ink, appearing to read "V. Emerson Hopkins", written in a cursive style.

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**VIRGINIA EMERSON HOPKINS**  
United States District Judge