

1 WO

KM

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 United States of America,
10 Plaintiff,

No. CV 13-8131-PCT-GMS (MEA)
CR 94-0266-PCT-GMS

11 vs.

ORDER

12 Michael Augustine Kee,
13 Defendant/Movant.
14

15 Movant Michael Augustine Kee, who is confined in the Federal Correctional
16 Institution Safford in Safford, Arizona, has filed a *pro se* “Motion for Relief From
17 Judgment Pursuant F.R.Civ. P. Rule 60(b)(4) and (6)” and an Amended Motion for Relief
18 From Judgment. Movant argues that the Court was without jurisdiction to try him in CR
19 94-266-PCT-GMS and that his conviction should therefore be vacated.

20 **I. Government’s Motion to Seal**

21 On June 7, 2013, Respondent filed a Response to the Amended Motion for Relief
22 from Judgment (Doc. 7) and a Motion to Seal (Doc. 6). Because Respondent’s Response
23 contains Movant’s personal information, the Court will grant the Motion to Seal.

24 **II. Amended Motion for Relief From Judgment**

25 An amended motion supersedes an original motion. *See Ferdik v. Bonzelet*, 963
26 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d
27 1542, 1546 (9th Cir. 1990). After amendment, the Court treats the original motion as
28 nonexistent. *Ferdik*, 963 F.2d at 1262.

1 The Court will summarily deny Plaintiff’s Amended Motion for Relief and
2 dismiss this action. Rule 60 of the Federal Rules of *Civil* Procedure does not provide
3 Movant with an avenue for challenging the judgment of conviction in his *criminal* case.
4 *See* Fed. R. Civ. P. 1 (“These rules govern the procedure in all civil actions and
5 proceedings in the United States district courts, except as stated in Rule 81.”).

6 A motion filed pursuant to 28 U.S.C. § 2255 is for a person “claiming the right to
7 be released upon the ground that the sentence was imposed in violation of the
8 Constitution or laws of the United States, or that the court was without jurisdiction to
9 impose such sentence, or that the sentence was in excess of the maximum authorized by
10 law, or is otherwise subject to collateral attack.” 28 U.S.C. § 2255. However, in this
11 case, the Court will not construe Movant’s claims as filed pursuant to § 2255 because
12 Movant has already filed an action under § 2255 challenging his conviction and sentence
13 in CR 94-266. The prior motion was denied on May 31, 2005 (Doc. 83 in CR 94-266)
14 and judgment was entered on the same date (Doc. 84 in CR 94-266).

15 Under 28 U.S.C. § 2244(b)(3)(A), before a second or successive § 2255 motion
16 may be filed in the district court, a movant must first obtain an order from the United
17 States Court of Appeals authorizing the district court to consider the motion. The Court
18 of Appeals will not issue an order authorizing a successive motion unless the motion
19 meets the requirements of 28 U.S.C. § 2244(b)(A) and (B). Movant has presented no
20 such order from the Court of Appeals for the Ninth Circuit. As a courtesy to Movant, the
21 Court will direct the Clerk of Court to provide Movant with a form approved by the
22 Ninth Circuit for filing an Application for Leave to File Second or Successive Petition or
23 Motion Under 28 U.S.C. § 2254 or § 2255.

24 The Court will deny as moot Movant’s remaining pending Motions (Docs. 10, 11,
25 and 13).

26 **IT IS ORDERED:**

27 (1) Respondent’s June 7, 2013 Motion to Seal (Doc. 6) is **granted**; the Clerk of
28 Court **must file under seal** Respondent’s Response (Doc. 7).

