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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

DERRYL TYRONE FOSTER,  
Petitioner,  
v.  
UNITED STATES OF AMERICA,  
Respondent.

Case No.: 17cv0623 LAB (JLB)

**ORDER DISMISSING CASE  
WITHOUT PREJUDICE**

Petitioner, a state prisoner proceeding pro se, has filed a Motion to Vacate his sentence pursuant to 28 U.S.C. § 2255. He seeks to challenge his San Diego Superior Court conviction for robbery. (See Pet. at 1, ECF No 1.)

Under § 2255:

A prisoner in custody under a sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside, or correct the sentence.

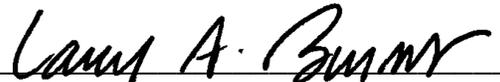
28 U.S.C. § 2255.

1 By its very language, § 2255 applies to federal prisoners challenging sentences  
2 imposed by the federal courts. Specifically, a prisoner in custody under sentence of a  
3 federal court who wishes to collaterally attack the validity of his conviction or sentence  
4 must do so by way of a motion to vacate, set aside or correct the sentence under § 2255 in  
5 the sentencing court. *Broussard v. Lippman*, 643 F.2d 1131, 1134 (5th Cir. 1981).  
6 Alternatively, a district court may entertain a petition for writ of habeas corpus “in behalf  
7 of a person in custody pursuant to the judgment of a State court only on the ground that  
8 he is in custody in violation of the Constitution or laws or treaties of the United States”  
9 pursuant to 28 U.S.C. § 2254. See 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21  
10 (1975).

11 Therefore, to the extent Petitioner wishes to challenge his state court conviction, he  
12 must do so under 28 U.S.C. § 2254.<sup>1</sup> Accordingly, Court **DISMISSES** the petition  
13 without prejudice.

14 **IT IS SO ORDERED.**

15 DATED: April 6, 2017

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18 Larry Alan Burns  
19 United States District Judge  
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27 <sup>1</sup> The Court declines to construe the document as a Petition for Writ of Habeas Corpus pursuant to 28  
28 U.S.C. § 2254. Petitioner has previously filed a petition under § 2254 with this Court, in which he  
challenged the same state court conviction. The petition was dismissed as successive on March 3, 2017.  
(See Civil. Case No. 17cv0019 AJB (JLB) (ECF No. 4).)