

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ARNOLD AGUILAR,
Petitioner,

v.

3:17-cv-00237-WWE

USA,
Respondent.

**RULING ON PETITIONER'S MOTION TO VACATE, SET ASIDE, OR CORRECT
SENTENCE**

On November 18, 2015, Arnold Aguilar appealed the reduction of his sentence to the United States Court of Appeals for the Second Circuit, purporting to identify legal error in the district court's calculation of his post-reduction Guidelines range. On November 2, 2016, the United States Court of Appeals for the Second Circuit affirmed the district court decision, upholding Aguilar's reduced sentence of 369 months of imprisonment. On January 9, 2017, the Supreme Court of the United States denied writ of certiorari.

On February 15, 2017, Aguilar filed this petition under § 2255 but he did not seek authorization from the Second Circuit as required by 28 U.S.C. § 2244(b)(3).

Pursuant to 28 U.S.C. § 2244(b)(3), a petitioning-defendant must seek permission from the Second Circuit Court of Appeals before filing a second or successive application. A petition is considered to be second or successive if a prior petition raised claims regarding the same conviction or sentence and that petition was decided on the merits. Quezada v. Smith, 624 F.3d 514, 517 (2d Cir. 2010). Aguilar's prior petition of November 18, 2015, concerned the same conviction or sentence and was decided on the merits. Accordingly, a transfer pursuant to 18 U.S.C. § 1681 to the Second Circuit is the proper remedy for Aguilar's uncertified successive § 2255 petition.

The petition to vacate, set aside, or correct sentence shall be transferred to the Second Circuit Court of Appeals. So ordered.

Dated this 2nd day of May, 2018, at Bridgeport, Connecticut.

/s/Warren W. Eginton
WARREN W. EGINTON
SENIOR UNITED STATES DISTRICT JUDGE