

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

2009 JUL 29 PM 3: 28

CLERK OF DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE, FLORIDA

UNITED STATES OF AMERICA

v.

Case No.: 3:07-cv-132-HES-TEM

STEVEN EUGENE PASSMORE

**ORDER**

Before the Court is Defendant's *Pro se* Motion to Vacate/Set Aside Judgment Under Rules 60(b)(4) and 60(b)(6) of the Fed. R. Civ. P. (Doc. 11, filed July 20, 2009). Defendant asks this Court to vacate its June 6, 2007 Order (Doc. 5) denying Defendant's Motion under 28 U.S.C. §2255. In support of his Motion, Defendant contends, almost two-years later, that this Court failed to address in full the arguments contained in ground two of his § 2255 Motion. Though Defendant's original § 2255 Motion was filed almost eight years after the judgment of his final conviction, Defendant argued that it was timely as, "it was filed within a year of the date on which the right asserted was initially recognized by the Supreme Court." (Doc. 2, at p. 6). Defendants argument relied on the *Apprendi/Blakely/Booker* line of cases, whose reasoning was determined not to apply retroactively to cases on collateral appeal. *Varela v. United States*, 400 F.3d 864, 868 (11th Cir. 2005). Moreover, as the Defendant's motion was filed outside the one-year statute of limitations, this Court did not have the jurisdiction to review Defendant's claims set forth in ground two of his § 2255 Motion.

Therefore it is **ORDERED** and **ADJUDGED** that Defendant's Motion is **DENIED**.

**DONE AND ENTERED** in Jacksonville, Florida, this 29 day of July, 2009

  
HARVEY E. SCHLESINGER  
United States District Judge

Copies to:  
Eugene Passmore, *Pro se*