

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

WARREN ANTHONY TILLERY,

Petitioner,

vs.

Case No.: 3:16-cv-764-J-32JRK
3:10-cr-188-J-32JRK

UNITED STATES OF AMERICA,

Respondent.

ORDER

This case is before the Court on Petitioner Warren Anthony Tillery's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence. (Civ. Doc. 1).¹ Petitioner argues that he is entitled to relief from his sentence under Johnson v. United States, 135 S. Ct. 2551 (2015), which held that the "residual clause" of the Armed Career Criminal Act is unconstitutionally vague, and Welch v. United States, 136 S. Ct. 1257 (2016), which held that Johnson applies retroactively on collateral review.

Because Petitioner previously moved to vacate his sentence under 28 U.S.C. § 2255 (see Case No. 3:13-cv-51-J-32JRK, Doc. 1), and because the Court denied the first motion to vacate on the merits (Case No. 3:13-cv-51-J-32JRK, Doc. 31),

¹ Citations to the record in the underlying criminal case, United States of America vs. Warren Anthony Tillery, Case No. 3:10-cr-188-J-32JRK, will be denoted as "Crim. Doc. ___." Citations to the record in the civil case, Case No. 3:16-cv-764-J-32JRK, will be denoted as "Civ. Doc. ___."

Petitioner was required to apply to the Eleventh Circuit Court of Appeals for permission to file a second or successive motion to vacate. See 28 U.S.C. § 2244(b)(3)(A) (“Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.”). On July 19, 2016, the Eleventh Circuit Court of Appeals denied Petitioner’s application. (Crim. Doc. 84).

Under 28 U.S.C. § 2255, “[a] second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals...” 28 U.S.C. § 2255(h). “Without authorization, the district court lacks jurisdiction to consider a second or successive petition.” United States v. Holt, 417 F.3d 1172, 1175 (11th Cir. 2005) (citing Farris v. United States, 333 F.3d 1211, 1216 (11th Cir. 2003)). Because the Eleventh Circuit denied Petitioner’s application to file a second or successive motion to vacate, the Court lacks jurisdiction over the current § 2255 motion.

Accordingly, it is hereby

ORDERED:

1. Petitioner Warren Anthony Tillery’s Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (Civ. Doc. 1) is **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.
2. Petitioner’s Motion to Hold § 2255 Proceedings in Abeyance (Civ. Doc. 3) is **DENIED AS MOOT**.

3. The Clerk shall close the file.

DONE AND ORDERED at Jacksonville, Florida this 15th day of September,
2016.



TIMOTHY J. CORRIGAN
United States District Judge

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Copies:

Counsel of record
Petitioner Warren Anthony Tillery