

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

TERRY LEONARD GRAHAM,

Petitioner,

v.

Case No. 6:07-cv-1256-Orl-19DAB
(6:93-cr-121-Orl-19DAB)

UNITED STATES OF AMERICA,

Respondent.

ORDER OF DISMISSAL WITHOUT PREJUDICE

Petitioner initiated this action by filing a Pro Se Nunc Pro Tunc Motion to Vacate Defendant's Illegal Conviction and Sentence for Count 1 (21 U.S.C. § 846), Based on Defendant Being Actually Innocent of the Charge, Which is a Violation of Defendant's 4th, 5th, 8th, and 14th Constitutional Rights (Doc. No. 1, filed August 3, 2007). Petitioner argues that his sentence and conviction are invalid because he is actually innocent and the Government withheld exculpatory evidence. The Court has construed the document as a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.S. § 2255.

Petitioner previously filed Case No. 6:98-1139-CIV-ORL-19 in this Court, which was dismissed on December 10, 1998. Thus, the present motion is a second or successive application for relief. Before Petitioner will be permitted to file a second or successive section 2255 motion in this Court, he must move in the Eleventh Circuit Court of Appeals for an order authorizing the district court to consider the motion. *See* 28 U.S.C. §§ 2244 and

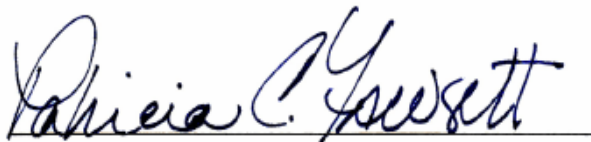
2255. Consequently, this case will be dismissed without prejudice to allow Petitioner the opportunity to seek authorization from the Eleventh Circuit Court of Appeals.

Petitioner should be aware that § 2255 limits the circumstances under which the Court of Appeals will authorize the filing of a second or successive section 2255 motion. Furthermore, 28 U.S.C. § 2255 also imposes a time limitation on the filing of a section 2255 motion. Petitioner, in seeking relief in the Court of Appeals, should be cognizant of these provisions.

Accordingly, it is now **ORDERED AND ADJUDGED**:

1. This case is hereby **DISMISSED** without prejudice.
2. The Clerk of the Court is directed to close this case and to send Petitioner an "Application for Leave to File a Second or Successive Motion to Vacate, Set Aside, or Correct Sentence 28 U.S.C. § 2255 By a Prisoner in Federal Custody" form.

DONE AND ORDERED at Orlando, Florida, this 7th day of August, 2007.



PATRICIA C. FAWSETT, CHIEF JUDGE
UNITED STATES DISTRICT COURT

Copies to:
sa 8/7
Counsel of Record
Terry Graham