

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

NEALLY CUNNINGHAM,

Petitioner,

v.

CASE NO. 6:08-cv-253-Orl-35KRS
(6:06-cr-32-Orl-19KRS)

UNITED STATES OF AMERICA,

Respondent.


ORDER

This case is before the Court upon Plaintiff's Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60(b)(6). (Doc. No. 38, filed April 23, 2010.) On April 1, 2010, this Court dismissed Petitioner's first Rule 60(b) motion because the claims raised in the motion were merely an attempt to reassert claims of error as to Petitioner's federal conviction. As noted by the Court in the April 1, 2010 Order, Petitioner's Rule 60(b) motion is properly characterized as a second or successive section 2255 motion. See *Gonzalez v. Crosby*, 545 U.S. 524, 530-31 (2005) (stating that a Rule 60(b)(2) motion premised on newly discovered evidence should be treated as a successive habeas petition). Furthermore, before Petitioner may 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 & 2255. In the instant motion, Petitioner raises the identical arguments raised in his first Rule 60(b) motion. Accordingly, it is **ORDERED** that Petitioner's Motion for Relief from Judgment

pursuant to Federal Rule of Civil Procedure 60(b)(6) (Doc. No. 38) is **DISMISSED** without prejudice to Petitioner's right to move in the Eleventh Circuit Court of Appeals for an order authorizing this Court to consider the motion.

DONE AND ORDERED in Orlando, Florida, this 19th day of May 2010.

Copies to:
sc 4/29
Neally Cunningham



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE