

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

GUILLERMO JIMENEZ,

Petitioner,

v.

CASE NO. 8:09-CV-2225-T-30MAP

CRIM. CASE NO. 8:05-CR-258-T-30MAP

UNITED STATES OF AMERICA,

Respondent.

ORDER

Before the Court is Petitioner's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 challenging his 2005 convictions for conspiracy to possess with intent to distribute 5 or more kilograms of cocaine while aboard a vessel subject to the jurisdiction of the United States, and possession with the intent to distribute 5 or more kilograms of cocaine while aboard a vessel subject to the jurisdiction of the United States (CV Dkt. 1). A motion to vacate must be reviewed prior to service on the United States. See Rule 4 of the Rules Governing § 2255 Cases. If the "motion and the files and records of the case conclusively show that the prisoner is entitled to no relief," the motion is properly denied without a response from the United States. 28 U.S.C. § 2255(b).

Petitioner and four co-defendants were indicted June 16, 2005, on one count of possession with intent to distribute 5 kilograms or more of cocaine on board a vessel in violation of 46 U.S.C. App. §§1903(a), (g) and 1903(j), and 21 U.S.C. §960(b)(1)(B)(ii)

(Count One); and one count of conspiracy to possess with intent to distribute 5 kilograms or more of cocaine on board a vessel in violation of 46 U.S.C. App. §§1903(a) and 1903(g), and 21 U.S.C. §960(b)(1)(B)(ii) (Count Two) (CR Dkt. 1). Petitioner entered a guilty plea on September 13, 2005 (CR Dkt. 78). On December 16, 2005, this Court sentenced Petitioner to 168 months imprisonment, and 5 years supervised release (CR Dkt. 94). Petitioner's request for collateral relief pursuant to 28 U.S.C. § 2255 was dismissed as time-barred on May 24, 2007 (CR Dkt. 129). See *United States v. Jiminez*, Case No. 8:07-CV-795-T-30MAP, 2007 U.S. Dist. LEXIS 37982 (M.D. Fla. 2007).

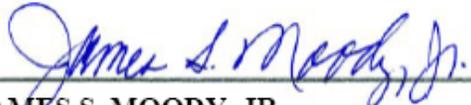
"[A] second or successive [§ 2255] motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals." 28 U.S.C. § 2255. See 28 U.S.C. §2244(b)(3)(A). Because Petitioner has previously sought collateral relief pursuant to § 2255 and he has not demonstrated that he has obtained permission from the Eleventh Circuit to file a second or successive motion, this Court is without jurisdiction to entertain the instant § 2255 motion. This case will, therefore, be dismissed without prejudice to allow Petitioner the opportunity to seek said authorization.

ACCORDINGLY, the Court **ORDERS** that:

1. Petitioner's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (CV Dkt. 1) is **DISMISSED** without prejudice (CV Dkt. 1).
2. The Clerk is directed to send Petitioner the Eleventh Circuit's application form for leave to file a second or successive § 2255 motion under 28 U.S.C. § 2244(b).

3. The Clerk shall terminate any pending motions and close this case.

DONE and **ORDERED** in Tampa, Florida on November 10, 2009.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

SA:sfc

Copy to: Petitioner pro se