

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

ANTONIO CORTEZ BOYD,

Petitioner,

v.

Case No: 8:16-cv-1813-T-30TGW

Crim. Case No: 8:09-cr-277-T-30TGW

UNITED STATES OF AMERICA,

Respondent.

_____ /

ORDER

THIS CAUSE comes before the Court upon Petitioner Antonio Cortez Boyd's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (CV Doc. 1). By his motion, Boyd asserts that he is entitled to relief pursuant to *Johnson v. United States*, 135 S. Ct. 2551 (2015), *declared retroactive by Welch v. United States*, No. 15-6418, 2016 WL 1551144 (Apr. 18, 2016). Because the Eleventh Circuit denied Boyd's motion for leave to file a successive § 2255, his motion should be dismissed.

Boyd's present § 2255 motion is a second or successive motion. Pursuant to 28 U.S.C. §§ 2255(h) and 2244(b)(3)(A), as amended by the Antiterrorism and Effective Death Penalty Act of 1996, federal prisoners who want to file a second or successive motion to vacate, set aside, or correct a sentence must move in the appropriate court of appeals for an order authorizing the district court to consider the second or successive motion. *See* 28 U.S.C. § 2244(b)(3)(A). A three-judge panel of the court of appeals may authorize the filing of a second or successive motion only if it determines that the motion contains claims which rely on either:

(1) newly discovered evidence that, if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing

evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

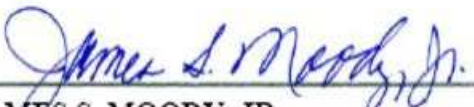
28 U.S.C. § 2255(h).

On July 20, 2016, the Eleventh Circuit denied Boyd's request to file a successive motion under § 2255 based on *Johnson*. (CV Doc. 5). Because Boyd has not received authorization to file a second or successive habeas petition from the Eleventh Circuit, this Court lacks jurisdiction to consider his motion and it should be dismissed. *See United States v. Holt*, 417 F.3d 1172, 1175 (11th Cir. 2005) ("Without authorization [from the appropriate court of appeals, a] district court lacks jurisdiction to consider a second or successive petition.").

Accordingly, it is therefore **ORDERED AND ADJUDGED** that:

1. Petitioner Antonio Cortez Boyd's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (CV Doc. 1) is **DISMISSED**.
2. The Clerk is directed to terminate from pending status the motion to vacate found at Doc. 97 in the underlying criminal case, case number 8:09-cr-277-T-30TGW.
3. The Clerk is directed to terminate any pending motions and close this case.

DONE and **ORDERED** in Tampa, Florida, this 29th day of July, 2016.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record