

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ANTHONY CALDERON,

Petitioner,

v.

Case No. 8:16-cv-1836-T-24 TBM
8:11-cr-592-T-24 TBM

UNITED STATES OF AMERICA,

Respondent.

ORDER

This cause comes before the Court on its own. On August 13, 2012, Petitioner pled guilty to Counts Three and Five of the Second Superseding Indictment for possession and brandishing one or more firearms in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c) and 2. On November 6, 2012, this Court sentenced Petitioner to 84 months of incarceration as to Count Three and 300 months of incarceration consecutive as to Count Five, for a total of 384 months of incarceration. On December 3, 2012, the Court entered an Amended Final Judgment, under which Petitioner was still ordered to serve 384 months total incarceration time. Petitioner was not sentenced under the Armed Career Criminal Act; instead, he was sentenced under 18 U.S.C. § 924(c). Petitioner did not file a direct appeal.

On May 10, 2016, Petitioner filed a *pro se* § 2255 motion based on Johnson v. United States, 135 S. Ct. 2551 (2015). (CR-Doc. 155). The Court opened up a civil case for the § 2255 proceeding, case number 8:16-cv-1198-T-24-TBM, and the Court dismissed the motion as untimely on May 31, 2016. (CR-Doc. 157).

On June 7, 2016, the Federal Public Defender filed a motion for reconsideration of this Court's denial of Petitioner's § 2255 motion. On June 21, 2016, the Federal Public Defender filed

a petition with the Eleventh Circuit to file a second § 2255 motion. The Eleventh Circuit denied the petition as premature, since this Court had not yet ruled on the pending motion for reconsideration. (CV-Doc. 4).

On June 26, 2016, the Federal Public Defender filed a second § 2255 motion on Petitioner's behalf. (CR-Doc. 168). The Court opened up a second civil case for this § 2255 motion, case number 8:16-cv-1836-T-24-TBM. The Court held this motion in abeyance pending a ruling from the Eleventh Circuit on the issue of whether Petitioner could file a second § 2255 motion.

On September 15, 2016, this Court denied the motion for reconsideration filed in the first § 2255 proceeding. There is no evidence that Petitioner made another petition to the Eleventh Circuit asking that Court to allow a second § 2555 motion. Therefore, the second § 2555 motion is an unauthorized, successive § 2555 motion. Because Plaintiff's motion is a successive motion to vacate which was filed directly with this Court without prior authorization from the Eleventh Circuit Court of Appeals, this Court lacks jurisdiction to consider the second § 2255 motion. See Farris v. United States, 333 F.3d 1211, 1216 (11th Cir. 2003).

ACCORDINGLY, it is **ORDERED AND ADJUDGED** that Petitioner's Motion to Vacate (CV-Doc. 1; CR-Doc. 168) is **DENIED**. The Clerk is directed to enter judgment for the United States in the civil case and then to **CLOSE** the civil case. Additionally, the Court declines to issue a certificate of appealability, because Petitioner has failed to make a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c)(2).

DONE AND ORDERED at Tampa, Florida, this 22nd day of February, 2017.

Copies to:
Counsel of Record


SUSAN C. BUCKLEW
United States District Judge