

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

LOPE ANTONIO LOPEZ-ORTEGA,

Plaintiff,

v.

Case No: 8:17-cv-96-T-30AEP
Crim. No: 8:08-cr-24-T-30AEP

UNITED STATES OF AMERICA,

Defendant.

ORDER

THIS CAUSE comes before the Court upon Petitioner's Motion to Vacate, Set Aside, or Dismiss Sentence Pursuant to 28 U.S.C. § 2255 (Dkt. 1/Crim Dkt. 160) and Motion for Permission to Continue with a Successive § 2255 (Dkt. 2). Upon review and consideration, the Court must dismiss Petitioner's § 2255 Motion because the Court lacks jurisdiction to consider it.

In 2010, Petitioner pled guilty to conspiracy to possess cocaine with the intent to distribute it. (Crim. Dkt. 116). In 2015, Petitioner filed his first Motion to Vacate, Set Aside, or Dismiss Sentence Pursuant to 28 U.S.C. § 2255. (Crim. Dkt. 145). In an order dated August 31, 2016, the Court dismissed Petitioner's motion. (Crim. Dkt. 156). Petitioner then filed this second § 2255 Motion. (Dkt. 1/Crim Dkt.160).

Before a district court can consider a second § 2255 motion, the Petitioner must petition the appropriate court of appeals for an order authorizing the district court to consider the motion. 28 U.S.C. § 2244(b)(3)(A); *Gonzalez v. Crosby*, 545 U.S. 524, 530

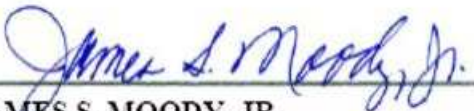
(2005). Petitioner has not yet done so. Therefore, the Court lacks jurisdiction to consider the motion. *United States v. Holt*, 417 F.3d 1172, 1175 (11th Cir. 2005).

It appears Petitioner attempted to file the required petition for leave to file a second § 2255 motion but incorrectly filed it with this Court instead of the Eleventh Circuit. Petitioner may re-file his petition with the Eleventh Circuit.

It is therefore ORDERED AND ADJUDGED that:

1. Petitioner's Motion to Vacate, Set Aside, or Dismiss Sentence Pursuant to 28 U.S.C. § 2255 (Dkt. 1) and Motion for Permission to Continue with a Successive § 2255 (Dkt. 2) are DISMISSED without prejudice.
2. The Clerk is directed to terminate Dkt. 160 in Petitioner's criminal case.
3. The Clerk is directed to terminate any pending motions and close the file.

DONE and **ORDERED** in Tampa, Florida, on January 18th, 2017.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record