

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 09-23586-CIV-LENARD/WHITE

EDGAR JOE SEARCY,

Petitioner,

vs.

**UNITED STATES OF AMERICA, et
al.**

Respondents.

**ORDER ADOPTING REPORT AND RECOMMENDATION (D.E. 4) AND
DISMISSING PETITIONER'S PETITION FOR WRIT OF MANDAMUS (D.E. 1)**

THIS CAUSE is before the Court on the Report and Recommendation of Magistrate Judge Patrick A. White (“Report,” D.E. 4), issued on January 12, 2010. Petitioner Edgar Joe Searcy (“Petitioner”) filed his Objections to the Report (“Objections,” D.E. 5) on January 25, 2010. After a *de novo* review of the Report, the Objections and the record, the Court finds as follows.

The Report finds that Petitioner’s Petition for Writ of Mandamus (“Petition,” D.E. 1) is actually a successive motion to vacate sentence pursuant to to 28 U.S.C. §, filed without first obtaining leave from Eleventh Circuit as required in 28 U.S.C. § 2244(b)(3)(A). (Report at 1.) Petitioner’s filed four prior motions to vacate the sentence imposed in Criminal Case No. 03-14028/MOORE. (*See id.* at 3; Civ. Case Nos. 05-14334-MOORE (denied on June 27, 2006); 07-21523-GOLD (dismissed as successive on September 20, 2007); 08-14266-MOORE (dismissed as successive on August 27, 2008); 09-14066-MOORE (dismissed as


successive on March 9, 2009).) Consequently, the Report recommends dismissing this successive petition. (*Id.* at 4.)

Plaintiff objects to the Report, repeating his arguments from this Petition and previous actions that his sentence was imposed “coram non iudice” and exceeds the statutory maximum. (*See generally*, Objections.) The Court need not address these arguments. The Court simply cannot ignore the clear statutory language of § 2244 and consider a successive motion without prior approval from the Eleventh Circuit. Petitioner cites no authority to the contrary. For this reason, his successive motion to vacate must be dismissed.

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

1. The Report and Recommendations of the Magistrate Judge (D.E. 4), issued on January 12, 2010, is **ADOPTED**.
2. Petitioner’s Petition for Writ of Mandamus (D.E. 1), filed on December 1, 2009, is **DISMISSED** as successive.
3. Petitioner’s Motion for Summary Judgment (D.E. 7), filed on March 24, 2010, is **DENIED** as moot.
4. This case is now **CLOSED**.

DONE AND ORDERED in Chambers at Miami, Florida this 22nd day of February, 2011.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE