

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

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PERRY DEAN MASON,

Petitioner,

v.

Case No. CV406-9
[Underlying CR499-238]

UNITED STATES OF AMERICA,

Respondent.

REPORT AND RECOMMENDATION

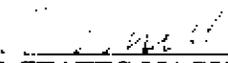
Movant has filed a motion to vacate, set aside, or correct his federal prison sentence pursuant to 28 U.S.C. § 2255. Doc. 1. Movant has previously filed a § 2255 motion with this Court challenging the same conviction, and it was denied. CV402-75, doc. 1. According to the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, Stat. 1214, “before a second or successive application permitted by [§ 2255] is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A); see 28 U.S.C. § 2255 (cross-referencing § 2244 certification requirement).

The Seventh Circuit has held that this provision “is an allocation of subject-matter jurisdiction to the court of appeals. A district court *must*

dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for its filing.” Nunez v. United States, 96 F.3d 990, 991 (7th Cir. 1996) (emphasis in original). The Eleventh Circuit has reached the same result. Hill v. Hopper, 112 F.3d 1088, 1089 (11th Cir. 1997) (finding district court lacked jurisdiction to consider second § 2254 petition); In re Medina, 109 F.3d 1556, 1561 (11th Cir. 1997) (holding district court properly denied successive petition because movant neglected to obtain certificate from federal appellate court authorizing consideration of motion).

Because movant has already filed under § 2255 and has failed to provide certification from the Eleventh Circuit authorizing this Court to consider this motion, this Court is without jurisdiction to consider movant’s petition at this time. Accordingly, the Court recommends that the instant motion be construed as a motion made under 28 U.S.C. § 2255 and that it be DISMISSED as successive.

SO REPORTED AND RECOMMENDED this 2nd day of February, 2006.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA