

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
URBANA DIVISION**

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<b>CEDRIC WASHINGTON,</b>	)	
	)	
<b>Petitioner,</b>	)	
<b>v.</b>	)	<b>Case No. 15-CV-2152</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Respondent.</b>	)	

**OPINION**

On July 6, 2015, Petitioner, Cedric Washington, filed a pro se Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255 (#1) and a Motion to Request Counsel (#3). Because this court concludes that this is a second or successive Motion, no response is needed from the Government. This court concludes that Petitioner’s Motion (#1) must be dismissed for lack of jurisdiction.

**ANALYSIS**

Petitioner has already filed a Motion under 28 U.S.C. § 2255. On February 16, 2007, in Case No. 07-CV-2039, Petitioner filed a Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255. On April 30, 2007, United States District Judge Michael P. McCuskey entered an Opinion and denied Petitioner’s Motion. Petitioner appealed, and the Seventh Circuit entered an Order denying Petitioner’s request for a certificate of appealability on January 17, 2008.

On July 6, 2015, Petitioner filed his Motion under § 2255 in this case. Because of Judge McCuskey’s retirement from his position as a District Court Judge, the case has been assigned to this court. In his lengthy pro se Motion (#1), Petitioner has raised arguments not

included in his previous Motion under § 2255. However, Petitioner’s Motion, brought pursuant to § 2255, “is subject to the requirement that second or successive motions under this statute must be authorized by the court of appeals.” *See United States v. Carraway*, 478 F.3d 845, 849 (7<sup>th</sup> Cir. 2007). Section 2255(h) provides that a “second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals.” 28 U.S.C. § 2255(h). Accordingly, a district court has no jurisdiction to hear a second or successive motion under § 2255 unless the Seventh Circuit Court of Appeals has issued an order authorizing the district court to consider the motion. *See* 28 U.S.C. § 2244(b)(3)(A); *Carraway*, 478 F.3d at 849; *Nunez v. United States*, 96 F.3d 990, 991 (7<sup>th</sup> Cir. 1996). “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*, 96 F.3d at 991 (emphasis in original).

In this case, the Seventh Circuit has not authorized the filing of a second or successive motion pursuant to § 2255. Consequently, this court is without jurisdiction to entertain Petitioner’s Motion and it must be dismissed. *See Nunez*, 96 F.3d at 991.

#### CERTIFICATE OF APPEALABILITY

Pursuant to Rule 11(a) of the Rules Governing § 2255 Proceedings, this court denies a certificate of appealability in this case. “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim,” which has happened here, a certificate of appealability should issue only when the prisoner shows both “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable

whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (emphasis added). This court concludes that jurists of reason would not find it debatable whether Petitioner’s Motion states a valid claim of the denial of a constitutional right and also concludes that jurists of reason would not find it debatable whether this court correctly found it lacks jurisdiction over Petitioner’s Motion because it is a second or successive motion pursuant to § 2255.

IT IS THEREFORE ORDERED THAT:

- (1) Petitioner’s pro se Motion to Vacate, Set Aside or Correct Sentence (#1) is dismissed for lack of jurisdiction.
- (2) A certificate of appealability is DENIED.
- (3) Petitioner’s Motion to Request Counsel (#3) is MOOT.
- (4) This case is terminated.

ENTERED this 17<sup>th</sup> day of July, 2015.

/s/Harold A. Baker

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HAROLD A. BAKER  
U.S. DISTRICT JUDGE