

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

WILLIAM M. DAVIS,)
)
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Movant,)
)
)
v.) No. 1:14CV98 RWS
)
)
UNITED STATES OF AMERICA,)
)
)
Respondent,)

MEMORANDUM AND ORDER

This matter is before me on movant's successive motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. The motion is denied.

On August 27, 2008, movant pled guilty to one count of felon in possession of a firearm. United States v. Davis, 1:08CR74 RWS. On December 16, 2008, I sentenced him as an armed career criminal to 180 months' imprisonment and three years of supervised release. Movant's conviction was affirmed on appeal. United States v. Davis, 352 Fed. Appx. 130, 131 (8th Cir. 2009). Movant filed his first § 2255 motion on January 11, 2011. Davis v. United States, 1:11CV4 RWS. I denied the motion on the merits on March 24, 2014. Movant did not appeal.

In the instant motion, movant argues that he should not have been sentenced as an armed career criminal because his previous convictions for burglary did not warrant the finding. He argues that he should be resentenced in accordance with Descamps v. United States, 133 S. Ct. 2276 (2013) (district courts may not apply the modified categorical approach to sentencing under Armed Career Criminal Act).

Under 28 U.S.C. § 2244(a) and § 2255(h) district courts may not entertain a second or successive motion to vacate unless it has first been certified by the Court of Appeals. The instant

motion has not been certified by the Court of Appeals for the Eighth Circuit. As a result I may not grant the requested relief.

Finally, movant has failed to demonstrate that jurists of reason would find it debatable whether the petition is successive. Thus, I will not issue a certificate of appealability. 28 U.S.C. § 2253(c).

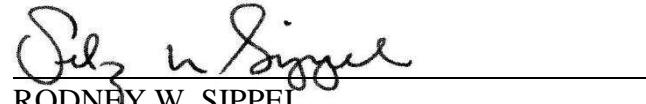
Accordingly,

IT IS HEREBY ORDERED that this action is **DISMISSED** without prejudice.

IT IS FURTHER ORDERED that I will not issue a certificate of appealability.

An Order of Dismissal will be file separately.

Dated this 2nd day of July, 2014.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE