

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

ROBERT LINDSEY,)	
)	
Movant,)	
)	
v.)	No. 4:14CV02097 ERW
)	
UNITED STATES OF AMERICA,)	
)	
Respondent,)	

MEMORANDUM AND ORDER

This matter is before the Court on movant’s successive motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. The Court will summarily dismiss it. See 28 U.S.C. § 2255, Rule 4.

Movant was indicted on gun and drug charges on December 1, 2005. United States v. Lindsey, 4:05CR682 ERW (E.D. Mo.). On June 28, 2006, a jury found him guilty on all charges. Movant filed a motion to vacate, set aside, or correct sentence on February 17, 2009. Lindsey v. United States, 4:09CV267 ERW (E.D. Mo.). On November 30, 2010, the Court dismissed it after reviewing the merits. The Court of Appeals declined movant’s application for a certificate of appealability.

Movant filed a second or successive motion to vacate on December 2, 2013, which the Court summarily dismissed. Lindsey v. United States, 4:13CV2438 ERW (E.D. Mo.). Once again, the Court of Appeals denied his application for a certificate of appealability.

In the instant motion, movant claims that the Court incorrectly counted a Missouri suspended imposition of sentence as a conviction.

Under 28 U.S.C. § 2255(h), a successive motion to vacate must first be presented to the Court of Appeals. Since movant has not done this, the Court must dismiss this action without further proceedings.

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

Accordingly,

IT IS HEREBY ORDERED that this action is **DISMISSED**.

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

IT IS FURTHER ORDERED that plaintiff's motion for appointment of counsel [ECF No. 2] is **DENIED**.

So Ordered this 12th day of January, 2015.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE