

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

AVERY WEST,)	
)	
Movant,)	
)	
v.)	Case No. 4:15CV210 HEA
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on movant's pro se "Petition for Writ of Certiorari to the United States District Court-Eastern District of Missouri." The motion is a "second or successive motion" within the meaning of 28 U.S.C. §§ 2244 & 2255 but has not been certified by the United States Court of Appeals for the Eighth Circuit as required by the AEDPA. As a result, the motion will be denied and dismissed.

On July 30, 2008, a jury convicted movant of three counts of possession with intent to distribute cocaine and one count of conspiracy to commit money laundering. *United States v. West*, Case No. 4:07CR656 HEA (E.D.Mo.). As a result of the conviction, this Court sentenced movant to concurrent terms of imprisonments of 400 months on each of the first three counts and 240 months on the conspiracy count. Movant's conviction and sentence were affirmed on appeal by the Eighth Circuit Court of Appeals on December 21, 2009. *See U.S. v. West*, No. 08-3916 (8th Cir. 2009).

Movant filed his first motion to vacate pursuant to 28 U.S.C. § 2255 on November 9, 2010. *See West v. U.S.*, No. 4:10CV2127 CEJ (E.D.Mo.). This Court denied the motion, and the United

States Court of Appeals for the Eighth Circuit denied movant's application for a certificate of appealability on September 4, 2014. *See West v. U.S.*, No. 14-1838 (8th Cir. 2014).

In the instant motion, movant claims that his counsel was ineffective for failing to properly investigate, failing to inform him of a possible plea offer from the government, failing to object to the Magistrate Judge's Report and Recommendation, and for failing to object to the wiretap authorization.

Under 28 U.S.C. § 2255(h):

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain--

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense . . .

Absent certification from the United States Court of Appeals, this Court lacks authority under § 2255 to grant movant's requested relief. As a result, the motion shall be dismissed.

Accordingly,

IT IS HEREBY ORDERED that movant's pro se "Petition for Writ of Certiorari to the United States District Court-Eastern District of Missouri" is **DENIED and DISMISSED as a SUCCESSIVE motion under 28 U.S.C. § 2255.**

IT IS FURTHER ORDERED that movant's motion to proceed in forma pauperis is **DENIED AS MOOT.**

IT IS FURTHER ORDERED that no certificate of appealability shall issue.

A separate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 4th day of February, 2015.

A handwritten signature in black ink, reading "Henry Edward Autrey", with a long horizontal flourish extending to the right.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE