

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

JOHN THEBEAU,)	
)	
Movant,)	
)	
v.)	No. 4:15-CV-1186-RWS
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on movant’s motion to vacate, set aside and correct sentence brought pursuant to 28 U.S.C. 2255 [Doc. 1]. The motion is a “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, without prejudice.

Background

On April 5, 2007, movant pled guilty to being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), and he was sentenced on July 6, 2007, to a term of 216 months’ imprisonment followed by three years of supervised release. United States v. Thebeau, No. 4:07-CR-41-DJS (E.D. Mo.). The

United States Court of Appeals for the Eighth Circuit affirmed the conviction and sentence. United States v. Thebeau, No. 07-2752 (8th Cir.).

The Court's records show that movant filed his first motion to vacate pursuant to 28 U.S.C. § 2255 on October 5, 2009. Thebeau v. United States, No. 4:09-CV-1660-RWS (E.D. Mo.). This Court denied the motion, and on August 3, 2011, the United States Court of Appeals for the Eighth Circuit denied movant's application for a certificate of appealability. The mandate issued on September 28, 2011. Thebeau v. United States, No. 11-1921 (8th Cir.). Movant filed his second motion to vacate on June 7, 2012. Thebeau v. United States, No. 4:12-CV-1032-RWS (E.D. Mo.). The motion was denied as successive, and movant did not appeal.

Discussion

As amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2255 provides that a "second or successive motion must be certified . . . by a panel of the appropriate court of appeals" to contain certain information. Title 28 U.S.C. § 2244(b)(3)(A) provides that "[b]efore a second or successive application permitted by this section 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."

Because movant did not obtain permission from the Eighth Circuit Court of Appeals to maintain the instant § 2255 motion in this Court, the Court lacks authority to grant movant the relief he seeks. As such, the instant action will be summarily dismissed, without prejudice.

Accordingly,

IT IS HEREBY ORDERED that movant's motion to vacate, set aside and correct sentence [Doc. 1] is **DENIED, without prejudice.**

IT IS FURTHER ORDERED that any and all remaining pending motions are **DENIED** as moot.

IT IS FURTHER ORDERED that the Court will not issue a Certificate of Appealability. See 28 U.S.C. § 2253.

Dated this 3rd day of August, 2015.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE