

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

JEROME WILLIAMS,)
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Movant,)
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v.) No. 4:15CV1813 RLW
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UNITED STATES OF AMERICA,)
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)
Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court on movant's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. In the instant motion, movant claims that the new Supreme Court case of *Johnson v. United States*, 135 S.Ct. 2551 (2015), decided in June of 2015, should be applied to his case in order to reduce his sentence. 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.

Petitioner was convicted, after a jury trial, of two counts of possession of a firearm by a convicted felon in violation of Title 18, United States Code, Section 922(g)(1) and one count of possession of an unregistered firearm in violation of Title 26, United States Code, Sections 5841 and 5861(d). *United States v. Williams*, 4:98CR277 DJS (E.D. Mo.). On February 5, 1999, the Court sentenced petitioner to an aggregate prison term of twenty-four (24) years. His case was affirmed on appeal in *United States v. Williams*, 194 F.3d 86 (8th Cir. 1999).

Petitioner filed a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255, which was denied on February 4, 2003. *Williams v. United States*, 4:01CV562 DJS (E.D. Mo.). Petitioner appealed the denial of his motion to vacate, and on June 24, 2003, the Eighth

Circuit Court of Appeals dismissed his appeal. *Williams v. United States*, No. 03-1624 (8th Cir. 2003). Petitioner filed a petition for writ of audita querela on November 16, 2012, which was denied on March 19, 2013. *See Williams v. United States*, 4:12CV2241 JCH (E.D.Mo. 2013). Petitioner's application for certificate of appealability was denied by the Eighth Circuit Court of Appeals on July 25, 2013. *See Williams v. United States*, No. 13-1826 (2013).

Under 28 U.S.C. § 2255:

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; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h).

Movant submitted his successive § 2255 motion without the required certification. When a second or successive habeas petition is filed in a district court without the authorization of the court of appeals, the court should dismiss it, or, in its discretion, transfer the motion to the appellate court so long as it is in the interests of justice. *Boyd v. U.S.*, 304 F.3d 813, 814 (8th Cir. 2002).

As this matter is relatively time sensitive and it appears that movant has a tenable claim for relief under *Johnson*, the Court finds that it is in the interest of justice to transfer movant's petition to the Eighth Circuit Court of Appeals as a request to file a second or successive § 2255 motion

based on *Johnson*, and its new law ruling. *See Menteer v. United States*, No. 15-3550 (December 3, 2015).

Accordingly,

IT IS HEREBY ORDERED that the instant motion to vacate is **DENIED**, without prejudice, because movant did not obtain permission from the court of appeals to bring the motion in this Court. *See* 28 U.S.C. § 2255(h).

IT IS FURTHER ORDERED that petitioner's motion for permission to file a successive habeas is **DENIED** without prejudice as the Court lacks the ability to grant petitioner's motion.

IT IS FURTHER ORDERED that the Clerk shall **TRANSFER** the instant motion to the United States Court of Appeals for the Eighth Circuit pursuant to 28 U.S.C. § 1631.

IT IS FURTHER ORDERED that the Clerk is directed to forward a copy of this Order to the Federal Public Defender for the Eastern District of Missouri.

Dated this 10th day of December, 2015.



RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE