

NOT FOR PUBLICATIONUNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

RICHARD BERNARDI, :

Petitioner, :

v. : Civil Action No. 05-2745(JWB)

UNITED STATES OF AMERICA, : O P I N I O N and O R D E R

Respondent. :

APPEARANCES:

RICHARD BERNARDI, pro se  
6 Gateshead Drive  
Lumberton, New Jersey 08048

BISSELL, Chief Judge

Richard Bernardi, pro se, has filed a "Verified Petition For Writ of Error Coram Nobis" purportedly under the all writs act (28 U.S.C. § 1651). Black's Law Dictionary (1996 Ed.) defines such an application as one "directed to a court for review of its own judgment and predicated on alleged errors of fact." Yet, in prior proceedings of record before this Court, such a review has either been conducted or is long barred by the passage of time. More importantly, Petitioner's application is clearly a de facto motion to "vacate, set aside or correct the sentence" and/or conviction in this matter, under 28 U.S.C. § 2255. If so treated, it is a successive petition within the contemplation of

that statute because, as revealed by the Petitioner's own papers, both an initial and several attempted successive petitions have already been filed (and denied) in this case. See e.g., Verified Petition at Exhibit L. Therefore, it may not be pursued without authorization from the United State Court of Appeals for the Third Circuit. (Id.; 28 U.S.C. §§ 2255, 2244). This Court has the power to dismiss the present petition or transfer it to that Court of Appeals. In light of previous denials by that court of tendered successive petitions (Exh. L., supra.), and the failure of the present papers to satisfy the criteria which might support permission to file at this time, the Court chooses to dismiss the Verified Petition, without prejudice to Petitioner's right to seek such permission from the Third Circuit. Now therefore,

IT IS on this 9<sup>th</sup> day of June, 2005,

**ORDERED** that, for the reasons set forth above, the present Verified Petition For Writ of Error Coram Nobis be, and the same hereby is, dismissed, without prejudice to its renewal if, as and when, upon his application to that court, the Third Circuit authorizes him to file the underlying successive petition.

/s/ John W. Bissell  
JOHN W. BISSELL  
Chief Judge  
United States District Court