

in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

The Government points out that this provision expressly limits § 2255 claims to claims seeking release from custody. Petitioner's restitution claim does not fall within the scope of § 2255.

In reply, Petitioner does not dispute this argument but, rather, asks that the Court treat his motion as a motion for reconsideration instead, "to conserve the expense of deliberations." (Pet. Reply 2.) This Court declines to do so, for two reasons. First, under Third Circuit law, new arguments in the reply brief are waived. Anspach v. City of Philadelphia, 503 F.3d 256, 259 (3d Cir. 2007) ("failure to raise an argument in one's opening brief waives it.") Second, the Court has before it a fully-briefed § 2255 motion. It does not have a fully-briefed motion for reconsideration before it. The Court will decide the motion Petitioner presented and that the parties briefed.

Petitioner's restitution claim seeks relief that is not available under § 2255. His § 2255 Petition will be denied.

This Court must determine whether a certificate of appealability should issue. L.A.R. 22.2. The Court should issue a certificate only if the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. 2253(c)(2). To make this showing, the "petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). As set forth above, this Court has concluded that the relief Petitioner seeks is unavailable under § 2255. It further concludes that Petitioner has not demonstrated that jurists of reason would find this assessment debatable or wrong. Therefore, this Court declines to issue a certificate of

appealability pursuant to section 2253(c)(2).

For the foregoing reasons, the Court will deny Petitioner's motion for relief under 28 U.S.C. § 2255. A certificate of appealability will not issue.

s/ Stanley R. Chesler
STANLEY R. CHESLER
United States District Judge

Dated: April 3, 2017