

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
DEXTER ISAAC,

Petitioner,

ORDER

13-CV-1406 (SJ)

-against-

UNITED STATES OF AMERICA,

Respondent.

-----X
Johnson, Senior District Judge.

On March 14, 2013, *pro se* petitioner Dexter Isaac, currently incarcerated at the United States Penitentiary Atwater, in Atwater, California, filed the instant petition pursuant to 28 U.S.C. § 2255 seeking to vacate his judgment of conviction entered under docket number 98-CR 497 (SJ). On July 30, 2002, petitioner filed a petition challenging this same conviction pursuant to 28 U.S.C. § 2255, which I dismissed by Order dated April 30, 2006. See Isaac v. USA, 02-CV-4279 (SJ). Petitioner filed an appeal to the United States Court of Appeals for the Second Circuit, which dismissed petitioner's appeal by mandate dated April 16, 2007. See Second Circuit dkt. number 06-2715-pr.

Section 2255 provides that:

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).

Because this is petitioner's second attempt in this Court to vacate the same conviction,

this Court lacks jurisdiction to address it on the merits and is required to transfer this petition to the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 1631. See Johnson v. United States, 623 F.3d 41, 43 (2d Cir. 2010); see also Poindexter v. Nash, 333 F.3d 372, 382 (2d Cir. 2003) (district court has no power to entertain a second or successive § 2255 motion unless the appropriate Court of Appeals has authorized the filing of that motion); Liriano v. United States, 95 F.3d 119, 122-23 (2d Cir. 1996).

Accordingly, in the interest of justice, the Clerk of Court shall transfer the instant petition to the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 1631. If the Second Circuit authorizes petitioner to proceed in this matter, petitioner shall move to reopen this proceeding under this docket number. The Clerk of Court shall close this case.

SO ORDERED.

/s
STERLING JOHNSON, JR.
Senior United States District Judge

Dated: Brooklyn, New York
July 13, 2013