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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

Larry Lamont Collins,

Petitioner,

v.

United States of America,

Respondent

1:06CV00036

1.00CR50

**RECOMMENDATION AND ORDER
OF UNITED STATES MAGISTRATE JUDGE**

Petitioner, a federal prisoner, has submitted a paper-writing requesting to be re-sentenced pursuant to the recent Supreme Court cases regarding the proof necessary to enhance sentences. Such relief could only be given through a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Construed as such, his motion cannot be further processed because court records reveal that petitioner has previously attacked this conviction and sentence in a section 2255 motion. [No. 1.02CV648] Consequently, petitioner must move in the Fourth Circuit Court of Appeals for an order authorizing this district court to consider the current motion. This is required by 28 U.S.C. § 2255 and 28 U.S.C. § 2244. See AO 243 (MDNC 3/97), Instructions, ¶ (4), which is enclosed. Because of this pleading failure, this particular motion should be filed and then dismissed.

IT IS THEREFORE RECOMMENDED that petitioner's submission be construed as a motion to vacate sentence and that this action be filed and then dismissed sua sponte for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the court of appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d).

IT IS THEREFORE ORDERED that the clerk send petitioner a copy of this recommendation, instruction forms for filing Section 2255 motions in this Court and Motions for Authorization in the court of appeals, and four copies of Section 2255 motion forms (more copies will be sent on request) Petitioner should keep the original and two copies of the Section 2255 motion which can be submitted in this court if petitioner obtains approval from the Fourth Circuit



Wallace W. Dixon, U.S. Magistrate Judge

January 13, 2006