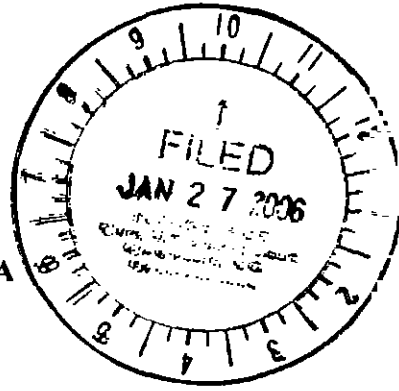


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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



Ricky Louis Davis,)
)
Petitioner,)
)
v.)
)
United States of America,)
)
Respondent.)

1:06CV00088
2:97CR134-1

ORDER AND RECOMMENDATION
OF MAGISTRATE JUDGE ELIASON

Petitioner, a federal prisoner, has submitted a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. This motion cannot be further processed for the following reason:

- I. Motion is not on proper § 2255 form - Forms enclosed.

Because of this pleading failure, this particular motion should be dismissed, but without prejudice to petitioner filing a new motion properly following the 28 U.S.C. § 2255 forms, correcting the defect of the present motion. The Court has no authority to toll the statute of limitation, therefore it continues to run if not already expired, and petitioner must act quickly if he intends to pursue this motion. See Spencer v. Sutton, 239 F.3d 626 (4th Cir. 2001).

IT IS THEREFORE ORDERED that, to further aid petitioner, the Clerk send petitioner section 2255 forms and instructions.

IT IS RECOMMENDED that this action be filed and dismissed sua sponte without prejudice to petitioner filing a corrected motion on the proper section 2255 motion forms.


United States Magistrate Judge

January 27, 2006