

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

3:13cv276

LEROY J. KELLY,)	
)	
Petitioner,)	
)	
Vs.)	ORDER
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
<hr/>)	

THIS MATTER is before the court on petitioner’s Motion for Reconsideration (#4) of the court’s previous Order and Judgment dismissing his “Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody” (#1) as successive. In relevant part, petitioner argues that “for this court not to entertain this petition when it knows that a gross injustice has ensued from counsel’s errors, would be a clear miscarriage of justice.” Motion (#4) at 6 (citation omitted). What petitioner does not comprehend is that no matter how valid petitioner perceives his claim to be, this court lacks the authority to consider a second or successive petition under Section 2255 unless petitioner first applies and then receives permission from the Court of Appeals for the Fourth Circuit as required under 28 U.S.C. § 2244(b)(3)(A).

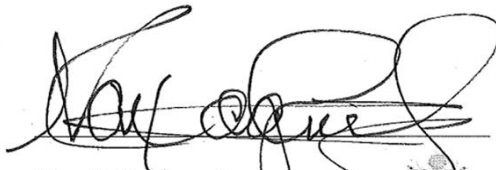
Petitioner’s previous § 2255 filing makes the instant filing a second or successive petition under the *Antiterrorism and Effective Death Penalty Act* (hereinafter the “AEDPA”). See 28 U.S.C. § 2255. The AEDPA requires that a “second or successive motion must be certified . . . by a panel of the appropriate court of appeals . . .” before it can be filed in the district court. Id. “Before a second or successive application [for habeas corpus] is filed in the district court, the

applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Thus, this court may not consider the merits of petitioner’s claims because he failed to first seek authorization from the Court of Appeals for the Fourth Circuit before filing it in this court.

ORDER

IT IS, THEREFORE, IT IS HEREBY ORDERED that Petitioner’s Motion for Reconsideration (#4) is **GRANTED**, and having fully reconsidered the previous Order, such Order is **REAFFIRMED**.

Signed: June 12, 2013

A handwritten signature in black ink, appearing to read 'Max O. Cogburn Jr.', written over a horizontal line. The signature is stylized with large loops and flourishes.

Max O. Cogburn Jr.
United States District Judge