

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
5:17-cv-118-MOC  
(5:13-cr-53-MOC-DCK-3)**

<b>DANIEL LEE FOSTER,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>vs.</b>	)	<b><u>ORDER</u></b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
	)	
<b>Respondent.</b>	)	
<hr/>	)	

**THIS MATTER** is before the Court on Petitioner’s Motion under 28, United States Code, Section 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, (Doc. No. 1).

**I. Initial Screening**

The Court has conducted an initial screening of the petition under the Rules Governing § 2255 Proceedings, Rule 4(b) 28 U.S.C.A. foll. § 2255, and finds: (1) the petition has not been signed under penalty of perjury, Rule 2(b)(5), 28 U.S.C.A. foll. § 2255; (2) Petitioner has provided indicia that the petition was timely filed, see § 2255(f); and (3) Petitioner has asserted a colorable claim for relief cognizable under § 2255(a).<sup>1</sup> Petitioner shall have twenty (20) days in which to resubmit the petition signed under penalty of perjury. If Petitioner fails to do so, the petition will

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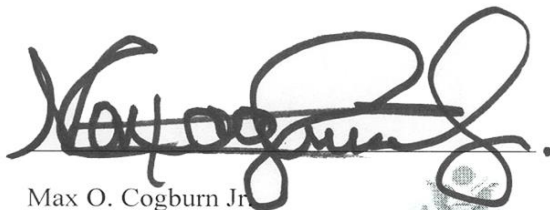
<sup>1</sup> Petitioner’s original motion to vacate was filed as Docket No. 447 in his underlying criminal case, seeking sentencing relief in light of the Supreme Court’s decision in Johnson v. United States, 135 S. Ct. 2551, 2563 (2015). See (Crim. Case No. 5:13-cr-53-MOC-DCK-3). Following this Court’s Castro notice, Petitioner indicated that he intends for the Court to construe his filing as a Section 2255 motion to vacate. See (Id., Doc. Nos. 461, 463, 465, 467).

be subject to dismissal without further notice. Upon receipt of the petition with Petitioner's signature under penalty of perjury, the Court will direct the United States to respond.

**IT IS, THEREFORE, ORDERED** that Petitioner shall have twenty (20) days from entry of this Order in which to resubmit the petition signed under penalty of perjury. If Petitioner fails to do so, the petition will be subject to dismissal without further notice.

Furthermore, the Clerk is respectfully instructed to mail Petitioner a Section 2255 form with this Order so that Petitioner may reassert his allegations on the form if he so wishes.

Signed: September 21, 2017



Max O. Cogburn Jr.  
United States District Judge