

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

Anthony Moore,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 1:08-cv-72
	)	
Robyn Scmalenberger, Warden,	)	
North Dakota State Penitentiary,	)	<b>ORDER DISMISSING MOTION</b>
	)	
Respondent.	)	

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Before the Court is Moore’s pro se motion pursuant to 28 U.S.C. § 2255. The motion is was filed November 18, 2011. Moore filed the motion in case number 1:08-cv-72 which is a long since closed case Moore filed in 2008 pursuant to 28 U.S.C. § 2254. Moore’s § 2254 petition was dismissed as untimely. The Eighth Circuit Court of Appeals summarily affirmed the dismissal.

Moore is a hobby litigant who has been clogging the state and federal dockets with frivolous and misguided filings since his state court conviction for gross sexual imposition in 2001. He is serving a twenty-year sentence at the North Dakota State Penitentiary.

Section 2255 relief only is available to prisoners in custody pursuant to the judgment of a federal court. A § 2255 motion should be filed in the original federal criminal case. A § 2254 petition, such as the one Moore filed in 2008, is an entirely new civil case brought by a prisoner in custody pursuant to the judgment of a state court. Moore is a state prisoner, not a federal prisoner. He is serving a sentence imposed by the State of North Dakota. Moore has no federal convictions. Consequently, § 2255 relief is unavailable to Moore. In addition, it is entirely

improper and procedurally impermissible to file a § 2255 motion in a closed § 2254 case. Moore has confused the available remedies and procedures.

Because § 2255 relief is unavailable to Moore, it is **HEREBY ORDERED** that:

1. Moore's motion is **DISMISSED**. His motion for appointment of counsel is **DENIED**.
2. The Court certifies that an appeal from the denial of this motion may not be taken in forma pauperis because such an appeal would be frivolous and cannot be taken in good faith. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).
3. Upon the entire record before the Court, dismissal of the motion is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983). Therefore, a certificate of appealability will not be issued by this Court.
4. If the movant desires further review of his motion he may request issuance of a certificate of appealability by a circuit judge of the Court of Appeals for the Eighth Circuit in accordance with Tiedeman v. Benson, 122 F.3d 518, 520-22 (8th Cir. 1997).

Dated this 7th day of December, 2011.

/s/ Patrick A. Conmy  
Patrick A. Conmy, Senior District Judge  
United States District Court