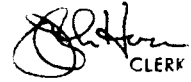


UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

FILED

MAR 08 2013

 CLERK

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JAMES MICHAEL WILBOURN,

CIV. 12-4186

Movant,

ORDER

-VS-

UNITED STATES OF AMERICA,

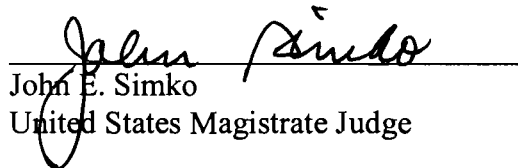
Respondent.

\*\*\*\*\*

Petitioner, James Michael Wilbourn moves for Reconsideration (Doc. 32) of the Court’s Order (Doc. 24) denying his request for immediate release pending resolution of his § 2255 Motion. In support of his Motion for Reconsideration, Wilbourn cites Fed. R. App. P. 23. That rule, however, applies to cases in which a decision on the merits has been made at the District Court level and is on appeal to the United States Court of Appeals. “In other words, FRAP 23 only applies when the court of appeal is reviewing a district court’s decision on a habeas action. As this case is currently at the district court level, FRAP 23 simply does not apply here.” *Williams v. Hagan*, 2010 WL 758233 (D.S.C.). No decision on the merits of Wilbourn’s case has been made at the District Court level. Wilbourn’s Motion for Reconsideration (Doc. 32) is DENIED.

Dated this 8 day of March, 2013.

BY THE COURT:

  
John E. Simko  
United States Magistrate Judge