

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

LYNETTA MAE WASHINGTON	§	
VS.	§	CIVIL ACTION NO. 4:16cv411 CRIM NO. 4:12CR00175-001
UNITED STATES OF AMERICA	§	

ORDER OF DISMISSAL

Petitioner Lynetta Mae Washington, a prisoner confined at FMC Carswell, brings this construed motion to vacate, set aside or correct her sentence pursuant to 28 U.S.C. § 2255. The motion was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation concluding that the motion should be dismissed for lack of jurisdiction. Washington has filed objections.

The present § 2255 motion is the second one filed by Washington. The first motion was dismissed with prejudice as time-barred. *Washington v. United States*, Civil Action No. 4:14cv367, 2016 WL 4508255 (E.D. Tex. Aug. 29, 2016). She did not file a notice of appeal. In her objections, Washington argues about the decision dismissing her prior § 2255 motion as time-barred, but such complaints should have been raised in Civil Action No. 4:14cv367. She could have appealed the decision of this Court, but she cannot challenge the decision in a new § 2255 proceeding. Washington must obtain permission from the Fifth Circuit in order to file a second or successive § 2255 motion. 28 U.S.C. § 2244(b)(3)(A). The present motion must be dismissed for lack of jurisdiction because Washington did not receive permission from the Fifth Circuit to file it. *United States v. Key*, 205 F.3d 773, 774 (5th Cir. 2000). Washington may file a new § 2255 motion if the Fifth Circuit gives her permission to file a second or successive § 2255 motion.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Washington to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Washington's objections are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2241, construed as a motion to vacate, set aside or correct Washington's sentence pursuant to 28 U.S.C. § 2255, is **DISMISSED** for lack of jurisdiction. All other motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this 30th day of November, 2016.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE