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**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF TEXAS**


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DIETRICH LEWIS JOHNSON, #19831-078	§	
	§	
<i>versus</i>	§	CIVIL ACTION NO. 4:16-CV-521
	§	CRIMINAL ACTION NO. 4:12-CR-80(1)
UNITED STATES OF AMERICA	§	

**ORDER OF DISMISSAL**

The above-entitled and numbered civil action was referred to United States Magistrate Judge Christine A. Nowak. The motion was referred to the Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case pursuant to 28 U.S.C. § 636 and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to the United States Magistrate Judge.

Movant Dietrich Lewis Johnson has filed numerous civil actions with this Court. The instant case was a second motion to vacate, set aside, or correct sentence filed pursuant to 28 U.S.C. § 2255. A second motion filed by a person attacking a sentence under 28 U.S.C. § 2255 must be certified as provided in 28 U.S.C. § 2244 by a panel of the appropriate court of appeals before it can be heard in the district court. *See In re Elwood*, 408 F.3d 211, 212 (5th Cir. 2005). The Court appointed counsel in this matter, and counsel sought permission from the Fifth Circuit Court of Appeals to pursue a second or successive § 2255 motion. Together with the Government, counsel filed a joint motion with the Fifth Circuit on September 20, 2016. However, on January 12, 2017, the Fifth Circuit denied the motion to file a second or successive motion. Accordingly, the Magistrate Judge concluded the case should be dismissed since permission to file a successive motion was denied. The Magistrate Judge then issued a Report and Recommendation, recommending the case be dismissed as successive.

The Report and Recommendation of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and no objections have been timely filed. After reviewing the Report and Recommendation (#4) and the record from the Fifth Circuit Court of Appeals (#5), which includes a proposed amended § 2255 motion (#5-1, pp. 58-69), an “Amended Agreed/Joint Motion for District Court to Consider a Second or Successive Motion under 28 U.S.C. § 2255” (#5-1, pp. 3-9) and the Fifth Circuit’s opinion denying permission to file a successive § 2255 motion (#5-1, pp. 76-77), the Court concludes that the findings and conclusions of the Magistrate Judge are correct, and adopts the same as the findings and conclusions of the Court.

It is accordingly **ORDERED** that Movant’s Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (#2) pursuant to 28 U.S.C. § 2255 is **DISMISSED** without prejudice. All motions by either party not previously ruled upon are **DENIED**.

SIGNED at Beaumont, Texas, this 17th day of April, 2017.



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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE