

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

KEVIN ARWIN HOUSTON
(BOP Register No. 25012-077),

Movant,

V.

UNITED STATES OF AMERICA,

Respondent.

§
§
§
§
§
§
§
§
§

No. 3:16-cv-3276-N

ORDER

The United States Magistrate Judge made findings, conclusions, and a recommendation in this case. An objection was filed by Movant. The District Court reviewed *de novo* those portions of the proposed findings, conclusions, and recommendation to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendation for plain error. Finding no error, the Court ACCEPTS the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

As the Court lacks jurisdiction over the unauthorized successive 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence, it is ORDERED, ADJUDGED, and DECREED that the motion is TRANSFERRED to the United States Court of Appeals for the Fifth Circuit for appropriate action.

Because the Court is transferring the successive Section 2255 motion to the Fifth Circuit for appropriate action, the Court need not address whether Movant is

entitled to a certificate of appealability (“COA”). *See United States v. Fulton*, 780 F.3d 683, 688 (5th Cir. 2015) (“[A] transfer order under 28 U.S.C. § 1631 is not a final order within the meaning of [28 U.S.C.] § 2253(c)(1)(B), and the appeal of such an order does not require a COA.”).

But in the event Movant will file a notice of appeal, the Court notes that Movant must pay the filing fee or file a motion for leave proceed *in forma pauperis* on appeal.

SO ORDERED this 16th day of December, 2016.



DAVID C. GODBEY
UNITED STATES DISTRICT JUDGE