

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST COURT
AT ROANOKE, VA
FILED
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DENNIS A. MCCARTHY,)	
Petitioner,)	Civil Action No. 7:06cv00059
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
UNITED STATES OF AMERICA,)	By: Samuel G. Wilson
Respondent.)	United States District Judge

Petitioner Dennis A. McCarthy brings this motion to correct his sentence pursuant to 28 U.S.C. § 2255, claiming his sentence is unconstitutional under United States v. Booker, 543 U.S. 220 (2005). McCarthy has previously filed a § 2255 motion regarding the same conviction and/or sentence. See McCarthy v. United States, 7:00cv00073 (W.D. Va. 2000). Thus, his current § 2255 motion is successive, and the court may only review it if the Fourth Circuit has authorized McCarthy to file a successive § 2255 motion. 28 U.S.C. § 2255. McCarthy does not allege that the Fourth Circuit has authorized him to file a successive motion. Accordingly, the court lacks jurisdiction to review McCarthy's motion and, therefore, dismisses it.¹

ENTER: This 23rd day of January, 2006.


UNITED STATES DISTRICT JUDGE

¹Moreover, the Supreme Court did not make Booker retroactive to cases on collateral review, meaning McCarthy may not raise a Booker claim in a § 2255 motion. See Booker, 125 S. Ct. at 769.