

CLERK'S OFFICE U.S. DIST. COURT AT ROANOKE, VA FILED MAY 02 2006 JOHN F. CORCORAN, CLERK BY: <i>[Signature]</i> DEPUTY CLERK

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

JOHN MACK GRIFFITH,)	
Petitioner,)	Civil Action No. 7:06cv00245
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
UNITED STATES OF AMERICA,)	By: Samuel G. Wilson
Respondent.)	United States District Judge

Petitioner John Mack Griffith brings this motion to correct his sentence pursuant to 28 U.S.C. § 2255, claiming that the Supreme Court’s decision in United States v. Booker, 543 U.S. 220 (2005), rendered his sentence illegal. However, this is Griffith’s second § 2255 petition, and, because Griffith does not appear to have obtained certification from the Fourth Circuit to file a successive § 2255 motion, the court dismisses his petition.

I.

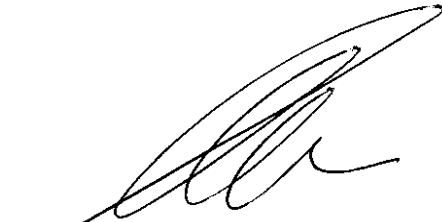
Griffith challenges his 235-month sentence for felony possession of a firearm. Court records indicate that Griffith has previously filed a § 2255 motion, 7:97cv00240 (W.D. Va.), regarding the same conviction and/or sentence. This court may consider a second or successive § 2255 motion only upon certification from the United States Court of Appeals for the Fourth Circuit. See § 2255, ¶8. Because Griffith does not appear to have received pre-filing authorization from the Fourth Circuit, this court must dismiss his petition as successive.¹

¹Moreover, Griffith’s case was on collateral review at the time of the Booker decision, and the Supreme Court did not make its decision in Booker retroactively applicable to cases on collateral review. See id. at 769; U.S. v. Johnson, 146 Fed.Appx. 656 (4th Cir. 2005) (one of a series of recent unpublished Fourth Circuit opinions in which the court has explicitly held that the Supreme Court did not make Blakely and Booker retroactive to cases on collateral review). Thus, Griffith’s Booker claim is unreviewable on collateral attack.

II.

For the reasons stated, the court denies Griffith's motion and dismisses it as a successive § 2255 petition.

ENTER: This 24 day of May, 2006.



UNITED STATES DISTRICT JUDGE