

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

CLERK'S OFFICE U.S. DIST. COURT  
AT LYNCHBURG, VA  
FILED *for Roanoke*  
MAY 08 2007

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<b>ROBERT LEE MITCHELL,</b>	)	
<b>Petitioner,</b>	)	<b>Civil Action No. 7:07-cv-00238</b>
	)	
<b>v.</b>	)	<b>MEMORANDUM OPINION</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	<b>By: Hon. Norman K. Moon</b>
<b>Respondent.</b>	)	<b>United States District Judge</b>

Petitioner, Robert Lee Mitchell, a federal inmate proceeding pro se, has submitted to the court a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255.<sup>1</sup> Upon review of the record, the court finds that the action must be dismissed as successive.

I.

Mitchell challenges his 210 month sentence for bank robbery by force or violence. Court records indicate that Wilson has previously filed a § 2255 motion, Civil Action No. 7:04-cv-00434 (W.D. Va.), regarding the same conviction and/or sentence. This court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria. See § 2255 ¶ 8. As Mitchell has not submitted any evidence of having obtained certification from the Court of Appeals to file a second or successive §2255 motion, the court must dismiss his petition as successive.<sup>2</sup>

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<sup>1</sup> Although Mitchell entitled his motion a “motion for this court to re-sentence defendant Robert Lee Mitchell to breathe new life into his direct appeal period because court appointed counsel has failed and refused to file a direct appeal in his behalf violating his 6<sup>th</sup> amendment to the United States Constitution,” the court believes that it is most appropriately construed as a motion pursuant to § 2255 because Mitchell is challenging the legality of his federal conviction.

<sup>2</sup> Petitioner is hereby advised of the procedure for obtaining certification from the United States Court of Appeals for the Fourth Circuit to have this court review a successive § 2255 motion. Petitioner must submit a copy of the successive § 2255 motion to the Court of Appeals, along with a motion requesting a three-judge panel

**II.**

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

The Clerk is directed to send certified copies of this Memorandum Opinion and the accompanying Order to the petitioner.

**ENTER:** This 8<sup>th</sup> day of May, 2007.

  
\_\_\_\_\_  
United States District Judge

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certification that the district court may review the successive § 2255 motion. See 28 U.S.C. § 2244 (as amended, 1996). A Fourth Circuit form and instructions for filing this motion will be included with this notice or are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.