

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

JOSEPH PAUL YOUNG,

Movant

v.

CIVIL ACTION NO. 2:12-0002
(Criminal No. 2:08-00226)

UNITED STATES OF AMERICA,

Respondent

MEMORANDUM OPINION AND ORDER

This action was previously referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to the court of her Proposed Findings and Recommendation ("PF&R") for disposition pursuant to 28 U.S.C. § 636.

On October 21, 2008, the United States filed a single-count indictment charging movant with bank robbery in violation of 18 U.S.C. § 2113(a). On April 8, 2009, movant pled guilty to the indictment. On June 15, 2009, movant was sentenced by the presiding judicial officer to a 240-month term of imprisonment, a three-year term of supervised release, and certain monetary penalties. On July 1, 2009, movant noticed his appeal of the Judgment. On August 17, 2009, the appeal was dismissed by the

United States Court of Appeals for the Fourth Circuit, without opposition by either side.

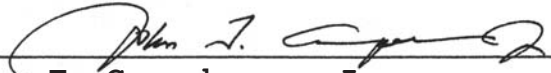
On December 30, 2009, movant sought relief pursuant to 28 U.S.C. § 2255. On December 27, 2010, the Judgment denying the motion was entered by the presiding judge. No appeal was taken. On October 7, 2011, movant filed a Motion to Appoint Counsel and Motion for Evidentiary Hearing ("motions"). On March 2, 2012, movant filed his Supplemental Motion for Appointment of Counsel and for Evidentiary Hearing ("supplemental motions"). On March 15, 2012, the magistrate judge entered her PF&R recommending that the motions and supplemental motions be denied.

On April 2, 2012, movant objected. In his objections, movant asserts that he is entitled to seek vacatur of his April 8, 2009 plea agreement. As noted by the magistrate judge, however, such a challenge must be pursued under section 2255. Inasmuch as movant has previously availed himself of that remedy without success, he is obliged to first seek leave from the court of appeals to pursue a successive request under that statute. Having not done so, he is entitled to no relief. The court, accordingly, concludes that movant's objections lack merit.

Based upon a de novo review, and having found the objections without merit, the court adopts and incorporates herein the magistrate judge's PF&R. The court, accordingly, ORDERS that this action be, and it hereby is, dismissed.

The Clerk is directed to forward copies of this written opinion and order to the movant, all counsel of record, and the United States Magistrate Judge.

DATED: May 16, 2012



John T. Copenhaver, Jr.
United States District Judge