

FILED

OCT 20 2005

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

DONNELL O. WILLIAMS,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent.

Cr. No. 91-0559-22 (TFH)

MEMORANDUM OPINION

Pending before the Court is Petitioner Donnell O. Williams' Notice of Judicial Cognizance ("Notice"). Having carefully considered Petitioner's submission, the Court will dismiss the Notice.

I. PROCEDURAL HISTORY

On February 11, 1993, Petitioner was convicted by jury of Conspiracy to Participate in a Racketeer Influenced Corrupt Organization, Conspiracy to Distribute and Possess with Intent to Distribute a Controlled Substance, Unlawful Distribution of Five grams or more of Cocaine Base, and Unlawful use of a Communication Facility. As a result of his convictions, Petitioner was sentenced to life imprisonment on November 22, 1993. On September 25, 1998, the Petitioner filed his first "Motion to Vacate, Set Aside, or Correct Sentence" pursuant to 28 U.S.C. § 2255. After denying the motion in part on August 17, 1999, and conducting two evidentiary hearings, the Court denied the Petitioner's remaining claims on May 4, 2000.

On October 20, 2000, the Court denied the Petitioner's "Motion for Leave to File Supplemental Notice/Judicial Notice," which asked this Court to consider several issues in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). On December 5, 2000, in denying the

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Petitioner's motion for leave to file a notice of appeal and certificate of appealability nunc pro tunc, the Court found that the motion was substantively a second or successive § 2255 motion. The United States Court of Appeals for the District of Columbia Circuit denied Petitioner's request for leave to file a second or successive motion on March 29, 2002.

On November 18, 2002, Petitioner filed a "Motion for Relief from Judgement." The Court found this third motion to be effectively another successive § 2255 motion, and denied the motion on January 28, 2004.

On February 9, 2005, Petitioner filed the instant "Notice of Judicial Cognizance."

II. DISCUSSION

Petitioner's stated purpose in submitting the Notice is to "inform [the] Court of the application of the [Supreme Court's] decision in Booker/Fanfan, as it could have great impact on Petitioner's now pending case in this Court." Notice at 2. To the extent that Petitioner is asking the Court to apply United States v. Booker, 125 S. Ct. 738 (2005), to his Motion for Relief from Judgment [# 1953], that request must be dismissed as moot because the Court denied the Motion for Relief from Judgment on January 28, 2004.

To the extent that Petitioner is making a new request of the Court to vacate, set aside, or correct his sentence on the basis of Booker, the instant Notice is effectively a successive motion under 28 U.S.C. § 2255. See United States v. Winestock, 340 F.3d 200, 206-07 (4th Cir. 2003) ("[T]he proper treatment of the motion depends on the nature of the claims presented."). This Court lacks jurisdiction to consider such a successive motion without certification from the Court of Appeals. 28 U.S.C. § 2255; see also Nelson v. United States, 115 F.3d 136, 136 (2d Cir. 1997); United States v. Pollard, 161 F. Supp. 2d 1, 3 (D.D.C. 2001). Accordingly, Petitioner's

Notice must be dismissed.

III. CONCLUSION

For the reasons stated above, the Court will dismiss Petitioner's Notice of Judicial Cognizance. An appropriate order will accompany this opinion.

October 20, 2005

/s/

Thomas F. Hogan
Chief Judge

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