

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

ANTHONY NUGENT,

Defendant.

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Crim. No. 91-0559-02 (TFH)

MEMORANDUM OPINION

The Court has allowed to be filed defendant's motion for leave to file an untimely motion for relief under 28 U.S.C. § 2255 or for leave to file a petition for a writ of *habeas corpus* under 28 U.S.C. § 2241. For the following reasons, the motion will be denied.

"No circuit or district judge shall be required to entertain [a habeas petition] to inquire into [a federal offender's] detention if it appears that the legality of such detention has been [previously determined], except as provided in section 2255." 28 U.S.C. § 2244(a). The criminal docket reflects plaintiff's unsuccessful attempts for relief under § 2255 and to file a successive motion. *See* Order (D.C. Cir., Jan. 20, 2004) [Dkt. No. 1986] (denying defendant's motion to file a successive motion); Order (D.D.C., Nov. 14, 2005) (Hogan, C.J.) [Dkt. No. 2036] (denying defendant's successive § 2255 motion for lack of jurisdiction). Thus, pursuant to 28 U.S.C. § 2244(b), defendant must seek permission from the United States Court of Appeals for the District of Columbia Circuit to file a successive motion. *See* 28 U.S.C. § 2255 ("A . . . successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals. . . ."); *In re Moore*, 196 F.3d 252, 254 (D.C. Cir. 1999) ("§ 2255 mandates" such certification); *Foster v. United States*, 290 F. Supp. 2d 5, 10

(D.D.C. 2003) (citing cases treating Rule 60(b) motions challenging judgments of conviction as successive habeas petitions).

As defendant was previously advised, “[b]efore a second or successive application . . . is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). The District of Columbia Circuit has not certified defendant’s motion to be filed. This Court therefore lacks jurisdiction to entertain the motion. *See Moore v. Department of Justice* 1998 WL 545421, *1 (D.C. Cir., July 17, 1998) (“The district court did not have jurisdiction to entertain appellant’s successive § 2254 petition since appellant never obtained certification from the court of appeals to file his successive petition.”).¹

A separate Order accompanies this Memorandum Opinion.

s/
Thomas F. Hogan, Chief Judge
United States District Court

Date: September 25, 2007

¹ To the extent that defendant claims that his § 2255 remedy is inadequate or ineffective, Mot. at 2-3, his recourse is to file a motion under 28 U.S.C. § 2241 in the judicial district where he is confined, which is the Middle District of Pennsylvania. *In re Smith*, 285 F.3d 6, 8 (D.C. Cir. 2002); *see Stokes v. U.S. Parole Commission*, 374 F.3d 1235, 1239 (D.C. Cir. 2004) (“[A] district court may not entertain a habeas petition involving present physical custody unless the respondent custodian is within its territorial jurisdiction.”).