

MAR 13 2008

NANCY MAYER WHITTINGTON, CLERK
U S DISTRICT COURT

¹ In his statement for relief, petitioner seeks vacation of “the ‘civil’ JUDGMENT IN A CRIMINAL CASE issued from a state corm operating from a Federal District Court . . . caused by the use of an instrument labeled an INDICTMENT, and a process that was VOID from its inception” and “[r]efunding of any and all ‘Special Assessment’ fees that were charged due to the invalid JUDGMENT.” Compl. at 22 (capitalization in original).

appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

28 U.S.C. § 2255. *See Taylor v. United States Board of Parole*, 194 F.2d 882, 883 (D.C. Cir. 1952) (attack on the constitutionality of the statute under which defendant was convicted and sentenced is properly pursued by motion under 28 U.S.C. § 2255); *Ojo v. Immigration & Naturalization Service*, 106 F.3d 680, 683 (5th Cir. 1997) (the sentencing court is the only court with jurisdiction to hear defendant’s complaint regarding errors that occurred before or during sentencing).

In the absence of any basis for finding petitioner’s remedy under § 2255 inadequate or ineffective, this civil court lacks jurisdiction to entertain the petition as an “independent action” under Rule 60(b). *See Woodford v. Garceau*, 538 U.S. 202, 208 (2003) (“The Federal Rules of Civil Procedure apply in the context of habeas suits to the extent that they are not inconsistent with the Habeas Corpus Rules.”); Fed. R. Civ. P. 81(a)(4) (2007) (civil rules of procedure applicable “to the extent that the practice in [habeas] proceedings is not specified in a federal statute . . . or the Rules Governing Section 2255 Cases”).

Because petitioner’s recourse lies in the sentencing court, the Court dismisses the case for want of jurisdiction. A separate order accompanies this Memorandum Opinion.

A handwritten signature in black ink, appearing to read 'Richard J. Leon', is written over a horizontal line.

RICHARD J. LEON
United States District Judge