

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA)	
)	
)	Case No. 1:06CR00046
)	
v.)	OPINION
)	
RODNEY EDWARD STEWART,)	By: James P. Jones
)	United States District Judge
Defendant.)	

Rodney Edward Stewart, Pro Se Defendant.

The defendant, Rodney Edward Stewart, proceeding pro se, filed related pleadings styled as a “MOTION PURSUANT TO Fed. R. Civ. P. 62.1 INDICATIVE RULING OR IN THE ALTERNATIVE Fed R. Civ. P. 60(b)(6) OR 60(d)(1).” This motion asserts that I erred in denying relief on Stewart’s Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. Specifically, Stewart argues that under subsequent court decisions, he is entitled to relief from his sentence. After reviewing Stewart’s current submission and the record, I will deny Stewart’s motion under the authority he cites and will construe and dismiss it as a successive § 2255 motion.

As stated, Stewart has already pursued a § 2255 motion regarding the same judgment. *United States v. Stewart*, No. 1:06CR00046, 2011 WL 4595243 (W.D. Va. Oct. 3, 2011), *appeal dismissed*, No. 11-7488, 2012 WL 886902 (4th Cir. Mar.

16, 2012) (unpublished). His current motion is not properly considered as a motion for relief from judgment under Rule 60, because he merely repeats claims the court has already decided or asserts new claims under new precedent. *Gonzalez v. Crosby*, 545 U.S. 524, 530-31 (2005). Instead, I must construe his submission as a new § 2255 motion. *Id.*

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. § 2255(h). Stewart offers no indication that he has obtained certification from the court of appeals to file a second or successive § 2255 motion. Therefore, I will direct the clerk's office to redocket Stewart's submissions as a § 2255 motion, which I will summarily dismiss as successive.

A separate Final Order will be entered herewith.

DATED: July 15, 2013

/s/ James P. Jones
United States District Judge