

2005 WL 2445452 (W.D. Va. Oct. 3, 2005). Cook now seeks relief from that decision. He claims that in July 2008, he discovered for the first time that his Presentence Investigation Report (“PSR”) was amended before sentencing to reduce the drug amounts for which he was held responsible. He then goes on to argue new claims for § 2255 relief based on this newly discovered fact.

Cook’s new arguments concerning the amended PSR do not demonstrate that I erred in my previous determination that his original § 2255 claims were untimely under § 2255(f)(1) or frivolous. Therefore, Cook’s current claims are not appropriately raised in a Rule 60(b) motion, but are properly considered as a successive § 2255 motion. *See Gonzales v. Crosby*, 545 U.S. 524, 531 (2005) (finding that if a Rule 60(b) motion presents claims that were omitted from a previous § 2255 motion due to mistake or excusable neglect, or offers newly discovered evidence not presented in the prior motion, it is properly classified as a second or successive motion). Cook has not submitted proper certification by the court of appeals authorizing consideration of a successive § 2255 by this court as required under § 2255(h). Therefore, I will construe Cook’s motion as a § 2255 motion, direct that it be docketed as such in his criminal file, Case No. 5:02CR30087, and dismiss it without prejudice, as successive pursuant to § 2255(h).

A separate Final Order will be entered herewith.

ENTER: April 22, 2009

/s/ JAMES P. JONES
Chief United States District Judge