

JUL 23 2013

JULIA C. DUDLEY, CLERK
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

UNITED STATES OF AMERICA) **Criminal Action No. 4:11-cr-00027-1**
)
v.) **§ 2255 MEMORANDUM OPINION**
)
SEKOU FOFANA,) **By: Hon. Jackson L. Kiser**
 Petitioner.) **Senior United States District Judge**

Sekou Fofana, a federal inmate proceeding pro se, filed a self-styled motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255. The court conditionally filed the self-styled motion; advised petitioner that it failed to comply with Rule 2 of the Rules Governing § 2255 Proceedings;¹ gave petitioner a copy of form AO 243, “Motion to Vacate, Set Aside, or Correct Sentence”; and granted petitioner ten days to remedy the oversight. The conditional filing order explicitly told petitioner that the court may dismiss the § 2255 motion without prejudice for failure to comply with a court order if he failed to refile a § 2255 motion signed under penalty of perjury.

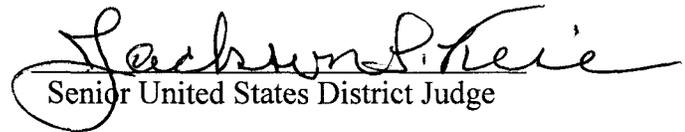
Petitioner subsequently refiled a copy of the original self-styled petition that still lacked the necessary verification. Thus, petitioner failed to comply with the conditional filing order, and his self-styled motion cannot constitute a proper § 2255 motion. Pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and Rules 4 and 12 of the Rules Governing § 2255 Proceedings, I dismiss petitioner’s § 2255 action without prejudice because he failed to comply with the court’s conditional filing order. See Link v. Wabash R.R. Co., 370 U.S. 626, 630-31 (1962) (“The authority of a court to dismiss sua sponte for lack of prosecution has generally been considered an ‘inherent power,’ . . . necessarily vested in courts to manage their own affairs so as

¹ Rule 2(b)(5) requires the § 2255 petitioner, or a person authorized to act on petitioner’s behalf, to sign the § 2255 motion under penalty of perjury.

to achieve the orderly and expeditious disposition of cases.”). Based upon my finding that petitioner has not made the requisite substantial showing of a denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability is denied.

The Clerk is directed to send copies of this Memorandum Opinion and the accompanying Order to petitioner and counsel of record for the United States.

ENTER: This 23rd day of July, 2013.


Senior United States District Judge