

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

UNITED STATES OF AMERICA

v.

JOSEPH MONROE,

Petitioner.

No. 3:94-cr-00041-004

OPINION & ORDER

JUDGE NORMAN K. MOON

This matter is before me upon Petitioner Joseph Monroe's ("Petitioner") motion, styled as a motion filed pursuant to Federal Rule of Civil Procedure 60(b)(6) (docket no. 310). Also before me is Petitioner's request to be released from incarceration pending consideration of the aforementioned motion (docket no. 311). For the reasons I discuss below, Petitioner's motion takes an improper form, and I will recharacterize it as a motion for relief under 28 U.S.C. § 2255, and then dismiss it for lack of jurisdiction. I will also dismiss Petitioner's request to be released from incarceration, as it fails to meet the requirements of 18 U.S.C. § 3143.

I. INTRODUCTION

On February 28, 1995, after a five-day trial in the Eastern District of Virginia, a federal jury convicted Petitioner of conspiracy and possession of cocaine base with intent to distribute in violation of 21 U.S.C. §§ 841 and 846. The Court then sentenced Petitioner to a term of imprisonment of three hundred sixty months for each count, to be served concurrently, and to a period of supervised release of ten years. Petitioner then timely appealed the conviction and sentence in his case, and on June 27, 1996, the Fourth Circuit affirmed his judgment.

The district court arrived at Petitioner's sentence, in part, through a sentencing enhancement applicable to those that committed a "felony drug offense" prior to their underlying conviction pursuant to § 841. Petitioner now argues that the Eastern District of Virginia improperly applied this enhancement. Specifically, he alleges that a certain 1985 drug-related conviction in state court in New Jersey was not a "felony drug offense" for purposes of § 841, and that he was therefore ineligible for the statutory enhancement applicable to his conviction.

II. DISCUSSION

On previous occasions, I have exhaustively reviewed the procedural history of this case and the many filings that Petitioner has submitted challenging the validity of his sentence. *See United States v. Monroe*, No. 3:94-cr-00041-NKM-BWC-4 (W.D. Va. July 24, 2012). Most recently, Petitioner challenged his sentence in a motion styled as a "writ of error coram nobis." I found such a motion to be "an unapproved second or successive section 2255 petition masquerading as a petition for a writ of error coram nobis." *Id.* (citing *Trenkler v. United States*, 536 F.3d 85, 95 (1st Cir. 2008)). I therefore recharacterized and construed Petitioner's motion as a successive § 2255 petition and dismissed it for lack of jurisdiction. *Id.* (citing *United States v. Winestock*, 340 F.3d 200, 205 (4th Cir. 2003)).

Today, Petitioner challenges his sentence in a motion filed pursuant to Federal Rule of Civil Procedure 60(b). Though the motion takes a different form than Petitioner's previous filings, its substance still "attack[s] the validity of his sentence rather than any alleged defect in the collateral review process." *United States v. Monroe*, No. 07-7339, slip op. at 2 (4th Cir. Aug. 19, 2008). Under such circumstances, Petitioner's motion amounts to a successive motion under 28 U.S.C. § 2255, and I therefore lack jurisdiction to consider it. *Id.*

III. CONCLUSION

For the foregoing reasons, Petitioner's motion is hereby **RECHARACTERIZED** as a motion attacking his federal sentence pursuant to 28 U.S.C. § 2255, and is hereby **DISMISSED without prejudice** for lack of jurisdiction (docket no. 310). Petitioner is again **ADVISED** that, in order to pursue any future motions pursuant to 28 U.S.C. § 2255, he must petition the United States Court of Appeals for the Fourth Circuit at 1100 East Main Street, Suite 617, Richmond, VA 23219-3517, and seek permission to file another § 2255 motion in this Court. Finally, because Plaintiff is unable to show that he is likely to succeed on his § 2255 motion at this time, his request to be released from incarceration is **DENIED** (docket no. 311).

It is so ORDERED.

The Clerk of the Court is directed to send a certified copy of this Opinion & Order to Petitioner, and to the United States.

Entered this _____ day of February, 2015.



NORMAN K. MOON
UNITED STATES DISTRICT JUDGE