

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

June 13, 2014

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

In re:

REYES J. MARTINEZ,

No. 14-1219

Movant.

ORDER

Before **HARTZ**, **O'BRIEN**, and **BACHARACH**, Circuit Judges.

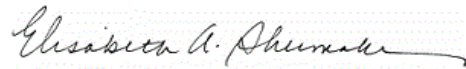
Reyes J. Martinez has filed a motion for authorization to file a second or successive motion under 28 U.S.C. § 2255. We dismiss the motion because he did not file it in the “appropriate court of appeals.” *Id.* § 2255(h).

Martinez is currently imprisoned at a federal correctional facility in Florence, Colorado. He states in his proposed § 2255 motion that he is seeking to challenge a judgment of conviction imposed by the United States District Court for the District of Colorado for conspiracy to distribute cocaine. He indicates that he was sentenced to 127 months’ imprisonment on September 13, 2007. Martinez lists the case number as “06-50052-02-KES.” That case number corresponds to a criminal case filed against Martinez in the United States District Court for the District of South Dakota. *See United States v. Martinez*, No. 5:06-cr-50052-KES-2 (D.S.D. judgment entered Sept. 13, 2007). In that case, Martinez pled guilty to one count of conspiracy to distribute a controlled substance and was sentenced to 127 months’ imprisonment. Martinez

also filed a § 2255 motion in this District of South Dakota case, which the court denied on March 20, 2009. We conclude that, despite Martinez’s reference to a District of Colorado conviction in his proposed § 2255 motion, he is asking for authorization to file a second or successive § 2255 motion challenging his conviction in the District of South Dakota.

A prisoner “may move the court which imposed the sentence to vacate, set aside or correct the sentence.” *Id.* § 2255(a). Before a prisoner may file a second or successive § 2255 motion, it must be authorized “by a panel of the appropriate court of appeals.” *Id.* § 2255(h) (incorporating certification process outlined in 28 U.S.C. § 2244); *see also id.* § 2244(b)(3)(A) (requiring applicant to move in “appropriate court of appeals” for authorization to bring second or successive habeas application). Because Martinez requires authorization to file his successive § 2255 motion in the District of South Dakota, the “appropriate court of appeals” in which to file a motion for authorization is the Eighth Circuit, not this court. *See generally* 28 U.S.C. § 41 (delineating the composition of the thirteen judicial circuits). Accordingly, this matter is DISMISSED.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", written in black ink over a light blue dotted rectangular background.

ELISABETH A. SHUMAKER, Clerk