

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

SPURGEON GREEN Jr.,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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Case No. 5:07-cr-00002-CAR-CHW-1

RECOMMENDATION

Spurgeon Green Jr. has filed a “Motion to Vacate the Applicability of 21 U.S.C. § 841(b)(1)(C)” (Doc. 537), in which he challenges his conviction on Count 12 of the indictment, based on the Supreme Court decision in *Burrage v. United States*, 571 U.S. 204 (2014). (Doc. 537). Because it raises a collateral attack on the validity of his conviction, Green’s motion must be construed as seeking relief under 28 U.S.C. § 2255. *Erwin v. Warden*, 2018 WL 11225303 at *2 (11th Cir. 2018). The Court has already denied a prior Section 2255 motion filed by Green, though, and the record fails to show that Green has received authorization from the Eleventh Circuit Court of Appeals as needed to advance a second or successive Section 2255 motion. 28 U.S.C. § 2255(h). Accordingly, it is **RECOMMENDED** that Green’s motion be **DISMISSED without prejudice** for lack of jurisdiction. *Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004).

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. The District Judge will make a *de novo*

determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are further notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 28th day of May, 2021.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge