

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

RUSSELL TODD MATHIS, <div style="text-align: center;">Movant,</div> <div style="text-align: center;">v.</div> UNITED STATES OF AMERICA, <div style="text-align: center;">Respondent.</div> <hr style="width: 40%; margin-left: 0;"/>	: : : : : : : : : : :	Criminal No. 5:17-cr-00013-MTT-CHW-7 Civil No. 5:20-cv-00282-MTT-CHW
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REPORT AND RECOMMENDATION

Before the Court is Movant Russell Todd Mathis’s motion for permission to proceed in a motion filed pursuant to 28 U.S.C. § 2255. (Doc. 615). The motion has been construed as a motion for reconsideration under Rule 60(b) of the Federal Rules of Civil Procedure. For the reasons discussed below, it is RECOMMENDED that the motion be DENIED.

BACKGROUND

In April 2017, Movant was indicted on charges of conspiracy to possess methamphetamine with intent to distribute in violation of 21 U.S.C. § 846 in connection with 21 U.S.C. § 841(a)(1) and (b)(1)(A)(viii) (count one); possession of methamphetamine with intent to distribute in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A)(viii) (counts thirteen, sixteen and seventeen); and possession of a firearm in furtherance of or in relation to a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1) (count eighteen). (Doc. 1).

Following a jury trial held from June 4 to June 6, 2018, Movant was found guilty on count one, the conspiracy count, and count thirteen, one of the possession with intent to distribute counts. (Doc. 430, p. 1). Movant was found not guilty on the remaining counts. (*Id.*). Movant received concurrent sentences of life imprisonment on both count one and count thirteen. (*Id.*, p. 2).

After the Court entered judgment, Movant appealed and his convictions were affirmed. *United States v. Mathis*, 802 F. App'x 488 (11th Cir. 2020). Movant filed a timely Section 2255 Motion (Doc. 546) in July 2020. He then moved to amend his Section 2255 motion in November 2020 (Doc. 582), along with a motion to recuse the District Court judge and motion for appointment of counsel. (Docs. 583, 584). In December 2020, following the Government's response to his Section 2255 motion, Movant filed a motion to withdraw these three motions. (Doc. 590). This motion was ultimately granted. (Doc. 601). Notably, the motion to withdraw did not ask to withdraw or dismiss Movant's original Section 2255 motion. *See* (Doc. 590). Therefore, the grounds of the motion were considered, along with the amended motion out of an abundance of caution, and it was recommended that his Section 2255 be denied. (Doc. 601). In the order adopting the recommendation, the Court recognized Movant's apparent confusion about the status of his original Section 2255; explained that Movant had never moved to withdraw the original motion and, therefore, that the motion remained pending; and then denied the motion on its merits. (Doc. 604).

CURRENT MOTION

Movant has asked for permission to proceed with a Section 2255 motion. (Doc. 615). The motion is best construed as motion to reconsider the previous orders granting his motion to withdraw and order denying his Section 2255 motion. (*Id.*) Operating under a continued belief that he moved to withdraw his original Section 2255 motion, he requests that this Court again review the motion to withdraw (Doc. 590), recommendation (Doc. 600), and order (Doc. 604), and allow him to proceed with what Movant believes would his first Section 2255 motion. (Doc. 615).

As the Court explained, Movant never moved to withdraw his Section 2255 motion. (Doc. 604). Therefore, the Court properly considered and denied the Section 2255 motion on the merits.

To the extent the pending motion can be read as a request to reconsider this Court's orders under Rule 60(b), Movant has provided no reason to grant his requested relief under any of the grounds listed in Rule 60(b), including the "catchall" provision found in Rule 60(b)(6). Therefore, the motion for permission to proceed (Doc. 615) should be denied.

Furthermore, Movant is advised that this Court would be without jurisdiction to entertain further post-collateral challenges from him without prior authorization from the Eleventh Circuit Court of Appeals. *See* 28 U.S.C. § 2255(h).

CONCLUSION

For the foregoing reasons, it is **RECOMMENDED** that Movant's motion for permission to proceed with a 28 U.S.C. § 2255 motion (Doc. 615) be **DENIED**.

OBJECTIONS

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. Any objection is limited in length to **TWENTY (20) PAGES**. *See* M.D. Ga. L.R. 7.4. The District Judge shall 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 1st day of May, 2023.

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