

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ALVIN DEMAR,	:	MOTION TO VACATE
BOP # 29940-510,	:	28 U.S.C. § 2255
Movant,	:	
	:	CRIMINAL ACTION NO.
v.	:	1:24-CR-94-ELR-1
	:	
UNITED STATES OF AMERICA,	:	CIVIL ACTION NO.
Respondent.	:	1:25-CV-3950-ELR-JEM

FINAL REPORT AND RECOMMENDATION

Movant, Alvin Demar, confined in the Federal Correctional Institution in Atlanta, Georgia, submitted a construed *pro se* motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence by a person in federal custody. (Doc. 15.) For the reasons stated below, the undersigned **RECOMMENDS** that the construed § 2255 motion to vacate be **DISMISSED WITHOUT PREJUDICE**.

I. DISCUSSION

On March 27, 2024, Movant pleaded guilty to five firearm offenses. (Docs. 1, 2.) On August 6, 2024, the District Court filed the Judgment and Commitment, sentencing Movant to 180 months of imprisonment, followed by three years of supervised release. (Doc. 14.) Movant did not appeal.

On June 2, 2025, Movant signed his construed § 2255 motion to vacate. (Doc. 15 at 4.) On July 31, 2025, the Court filed an Order requiring Movant, within 30 days, to submit a proper § 2255 motion to vacate. (Doc. 16 at 1.) The

Court cautioned Movant that this action could be dismissed for failure to comply with that Order. (*Id.*)

As of the date of this Final Report and Recommendation, the docket sheet for this case indicates that Movant has neither complied with the Court's Order nor otherwise addressed his failure to comply. Therefore, the undersigned finds that Movant has failed to comply with a lawful Order of the Court. *See* Fed. R. Civ. P. 41(b); N.D. Ga. R. 41.3A(2). The construed § 2255 motion to vacate (Doc. 15) should be dismissed without prejudice. Movant may file a proper § 2255 motion to vacate when he is prepared to comply with this Court's Orders.¹

II. CERTIFICATE OF APPEALABILITY

Pursuant to Rule 11(a) of the Rules Governing Section 2255 Cases, "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. . . . If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2)." Section 2253(c)(2) states that a certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." A substantial showing of the denial of a constitutional right "includes showing that reasonable jurists could debate whether (or, for

¹ Movant need not seek authorization from the Eleventh Circuit to file a "second or successive" § 2255 motion to vacate under 28 U.S.C. §§ 2244(b)(3)(A) & 2255(h). "[S]econd or successive status only attaches to a judgment on the merits," not a dismissal without prejudice. *Boyd v. United States*, 754 F.3d 1298, 1302 (11th Cir. 2014).

that matter, agree that) the [§ 2255 motion] should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks omitted).

When the district court denies a [§ 2255 motion] on procedural grounds without reaching the prisoner’s underlying constitutional claim . . . a certificate of appealability should issue only when the prisoner shows both that jurists of reason would find it debatable whether the [motion] states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Jimenez v. Quarterman, 555 U.S. 113, 118 n.3 (2009) (citing *Slack*, 529 U.S. at 484) (internal quotation marks omitted).

The undersigned **RECOMMENDS** that a certificate of appealability be **DENIED** because the resolution of the issues presented is not debatable. If the District Court adopts this recommendation and denies a certificate of appealability, Movant “may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.” 28 U.S.C. foll. § 2255, Rule 11(a).

III. CONCLUSION

For the reasons stated above, the undersigned **RECOMMENDS** that (1) the construed § 2255 motion to vacate (Doc. 15) be **DISMISSED WITHOUT PREJUDICE**, (2) a certificate of appealability be **DENIED**, and (3) civil action number 1:25-CV-3950-ELR-JEM be **CLOSED**.

The Clerk is **DIRECTED** to terminate the referral of the § 2255 motion to vacate to the undersigned.

SO RECOMMENDED, this 25th day of September, 2025.



J. ELIZABETH McBATH
UNITED STATES MAGISTRATE JUDGE