

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

XZAVIOUS MONTREZ BROWN,
Movant,

v.

UNITED STATES OF AMERICA,
Respondent.

MOTION TO VACATE
28 U.S.C. § 2255

CRIMINAL ACTION NO.
1:93-cr-377-TWT-CCB-1

CIVIL ACTION NO.
1:25-cv-7347-TWT-CCB

FINAL REPORT AND RECOMMENDATION

Movant Xzavious Montrez Brown has filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. [Doc. 281]. Although it is not entirely clear from the motion, Movant appears to raise one claim regarding the evidence introduced in his case and two claims of ineffective assistance of counsel. [*Id.*]. However, this Court is without jurisdiction to consider the motion.

On March 9, 1995, a jury convicted Movant of two counts of bank robbery, two counts of possession of a firearm during a crime of violence, and one count of aggravated assault on a correctional officer. *See* [Doc. 143 at 1]. Movant's conviction was affirmed by the Eleventh Circuit on September 17, 1997. [Doc. 117]. On February 18, 2003, Movant filed a § 2255 motion to vacate [Doc. 123], which the Court denied as untimely. [Doc. 134]. Movant filed a second § 2255 motion on June 16, 2016 [Doc. 173], which the Court dismissed as an impermissible second or

successive § 2255 motion. [Doc. 182]. Movant filed the instant § 2255 motion on December 19, 2025. [Doc. 281].

In his motion, Movant argues that “[t]he Irrelevant Evidence Introduced so infected the trial with Unfairness, as to render the Resulting Conviction, or Sentence, or Both, A Denial of Due Process.” [*Id.* at 2]. Movant also claims that he received ineffective assistance of counsel “because Counsel was deficient to the extent that he did not understand the federal laws, as necessary to make a determination of the Precise Nature of the Government Function, involved as well as the Precise Nature of the Private Interest that has been affected by governmental action.” [*Id.* at 4]. Movant further claims that he received ineffective assistance of appellate counsel because “Appellate counsel did not understand the relevance of the Contents of the Federal Register, did not understand the relevance of the Code of Federal Regulations[.]” [*Id.* at 6].

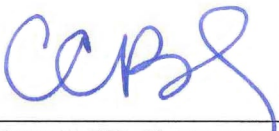
This matter is before the Court for initial screening of the § 2255 motion under Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts. 28 U.S.C. foll. § 2255, Rule 4(b). Under Rule 4, the Court “must dismiss” a § 2255 motion “[i]f it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief[.]” *Id.* A federal prisoner who wishes to file a second or successive § 2255

motion is required to file a motion with the Court of Appeals for an order authorizing the district court to consider such a motion. *See* 28 U.S.C. § 2255(h) (cross-referencing 28 U.S.C. § 2244). Absent such authorization, a district court lacks jurisdiction to consider a second or successive § 2255 motion. *United States v. Holt*, 417 F.3d 1172, 1175 (11th Cir. 2005).

Movant filed his initial § 2255 motion on February 18, 2003 [Doc. 123], which the Court denied as untimely. [Doc. 134]. Movant subsequently filed a motion to amend that § 2255 motion [Docs. 137, 140], which the Court also denied. [Doc. 144]. Movant filed a second § 2255 motion on June 16, 2016 [Doc. 173], which the Court dismissed as an impermissible second or successive § 2255 motion. [Doc. 182]. Movant filed the instant motion on December 19, 2025. [Doc. 281]. Movant does not appear to have sought, or been granted, leave to file a successive § 2255 motion. Because Movant has not obtained authorization from the Court of Appeals to file a second or successive § 2255 motion, this Court lacks jurisdiction to consider his present filing. Federal law does not provide any exception to the requirement that a movant receive authorization from the Court of Appeals prior to consideration of a successive § 2255 motion. *See* 28 U.S.C. §§ 2255(h), 2244(b)(3)(A).

Accordingly, I **RECOMMEND** that Movant's motion to vacate [Doc. 281] be **DENIED** for lack of subject matter jurisdiction and that civil action number 1:25-cv-7347-TWT-CCB be **CLOSED**.¹

SO RECOMMENDED, this 25th day of February, 2026.



CHRISTOPHER C. BLY
UNITED STATES MAGISTRATE JUDGE

¹ Ordinarily, federal prisoners must obtain a certificate of appealability to appeal the denial of a § 2255 motion. 28 U.S.C. § 2253(c)(1)(B); *Jackson v. Crosby*, 437 F.3d 1290, 1294 (11th Cir. 2006). However, the Eleventh Circuit has held that dismissal for lack of subject matter jurisdiction of a successive petition does not constitute a “final order in a habeas corpus proceeding” for purposes of § 2253(c), and “a certificate is unnecessary to permit [appellate] review [of a] district court’s order of dismissal.” *Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004).