

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANA NELSON,

Defendant.

Crim No. 89-20081-06-KHV

Civil No. 06-3029-KHV

ORDER

This matter is before the Court on defendant's Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside Or Correct Sentence By A Person In Federal Custody (Doc. #555) filed January 23, 2006.

Factual Background

On October 18, 1989, a grand jury returned an indictment which charged Dana Nelson with conspiracy to possess crack cocaine with intent to distribute in violation of 21 U.S.C. § 846 and possession of cocaine base with the intent to distribute within 1000 feet of a public school in violation of 21 U.S.C. § 845a(a) (now codified at 21 U.S.C. § 860). On January 4, 1990, a jury found defendant guilty on both counts. The Court sentenced defendant to 292 months in prison. See Judgment Including Sentence (Doc. #263) filed April 11, 1990. On appeal, the Tenth Circuit affirmed defendant's conviction in all respects. See United States v. Nelson, et al., 941 F.2d 1213, 1991 WL 163061 (10th Cir. Aug. 23, 1991), cert. denied, 502 U.S. 1044 (1992).

On November 7, 2001, the Court overruled defendant's first motion to vacate under 28 U.S.C. § 2255. See Memorandum And Order (Doc. #531). Defendant now has filed a second motion to vacate under 28 U.S.C. § 2255.

Analysis

Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, a defendant may not file a second or successive motion pursuant to Section 2255 unless he first applies to the appropriate court of appeals for an order authorizing the district court to consider the motion. See 28 U.S.C. §§ 2244(b)(3), 2255; Coleman v. United States, 106 F.3d 339, 340 (10th Cir. 1997). If defendant files a second or successive motion without first seeking the required authorization, the district court must transfer the motion to the appellate court in the interest of justice pursuant to 28 U.S.C. § 1631. See id. at 341.

IT IS THEREFORE ORDERED that the Clerk shall forward a copy of defendant's Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside Or Correct Sentence By A Person In Federal Custody (Doc. #555) filed January 23, 2006, along with a copy of this Order, to the Clerk of the Tenth Circuit Court of Appeals for processing under 28 U.S.C. § 2244(b)(3).

Dated this 26th day of January, 2006, at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge