

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

Civil Case No. 03-3437-SAC
Criminal Case No. 98-40079-02-SAC

DAMIAN INOCENTE GONZALEZ,

Defendant/Movant.

MEMORANDUM AND ORDER

The case comes before the court on the defendant's filing of a third motion for relief under 28 U.S.C. § 2255 that the defendant captioned as "Speedy Motion for Dismissal of Case for Lack of Evidence and Admission of False Testimony." (Dk. 210). The defendant filed his first § 2255 motion after the one-year limitations period had expired, and the court dismissed it. (Dk. 204). The defendant next filed a "Response," (Dk. 205), which the court treated as a Rule 60(b) motion and denied it. (Dk. 207). While his "Response" was still pending, the defendant filed a "Speedy Motion" to dismiss case for lack of evidence and admission of false testimony. (Dk. 206). The district court viewed this filing as a second or successive § 2255 motion that could not be considered without the Tenth Circuit's authorization. (Dk. 207). On January 7, 2005, the Tenth Circuit

denied the defendant authorization to file a successive § 2255 motion. (Dk. 209). The defendant filed his third motion for § 2255 relief on January 31, 2005. (Dk. 210).

As has been explained in its prior order, without prior authorization from the Tenth Circuit, this court is without jurisdiction to rule on a successive § 2255 motion, *see United States v. Avila-Avila*, 132 F.3d 1347, 1348-49 (10th Cir. 1997), and the defendant may not file a successive § 2255 motion, *see Daniels v. United States*, 254 F.3d 1180, 1188 (10th Cir. 2001). Therefore, the court is unable to consider the defendant's motion.

IT IS THEREFORE ORDERED that the Clerk of the Court shall forward a copy of the defendant's motion (Dk. 210) to the Clerk of the Tenth Circuit Court of Appeals for processing under 28 U.S.C. § 2244(b)(3). The Clerk also shall send a copy of this Memorandum and Order to the defendant and the local office of the United States Attorney.

Dated this 10th day of February, 2005, Topeka, Kansas.

s/ Sam A. Crow
Sam A. Crow, U.S. District Senior Judge