

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

**United States of America,**

**Plaintiff,**

**v.**

**Case No. 01-20010-03-JWL**

**Luis Daniel Ramos-Palomino,**

**Defendant.**

**MEMORANDUM & ORDER**

On January 17, 2001, a grand jury indicted Mr. Ramos-Palomino on four counts of various drug violations. After the parties failed to reach a plea agreement, defendant went to trial on all four counts. On April 27, 2001, a jury convicted Mr. Ramos-Palomino on Counts II, III and IV of the indictment, but acquitted him on Count I. Mr. Ramos-Palomino appealed his conviction and sentence and the Tenth Circuit affirmed his conviction and sentence on October 18, 2002. On February 27, 2003, Mr. Ramos-Palomino filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255. The court denied in part the motion and Mr. Ramos-Palomino withdrew that portion of the motion that the court had retained under advisement pending an evidentiary hearing.

On March 22, 2005, Mr. Ramos-Palomino filed a motion to vacate, set aside or correct his sentence (doc. 131) in which he asks this court to vacate his sentence in light of the Supreme Court's decisions in *Blakely v. Washington*, 124 S. Ct. 2531 (2004) and *United States v. Booker*, 125 S. Ct. 738 (2005). Because this is Mr. Ramos-Palomino's second habeas petition, he is required to obtain prior authorization from the Tenth Circuit before filing his petition in this court.

*See Lopez v. Douglas*, 141 F.3d 974, 975 (10th Cir. 1998). The record reveals that Mr. Ramos-Palomino has not obtained authorization from the Tenth Circuit and, as a result, this court lacks jurisdiction to address the merits of Mr. Ramos-Palomino's unauthorized second petition. *See id.* at 975-76. The court, then, must transfer Mr. Ramos-Palomino's motion to the Tenth Circuit in the interest of justice pursuant to 28 U.S.C. § 1631. *See Coleman v. United States*, 106 F.3d 339, 341 (10th Cir. 1997).

**IT IS THEREFORE ORDERED BY THE COURT THAT** defendant's motion pursuant to 28 U.S.C. § 2255 (doc. 131) is transferred to the Tenth Circuit Court of Appeals.

**IT IS SO ORDERED.**

Dated this 28<sup>th</sup> day of March, 2005, at Kansas City, Kansas.

s/ John W. Lungstrum \_\_\_\_\_  
John W. Lungstrum  
United States District Judge