

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

MANUEL VASQUEZ-ARROYO,)	
)	
Petitioner,)	
)	
v.)	Case No. 03-10200-01WEB
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

Now before the Court is Petitioner's motion under 28 U.S.C. § 2255. (Doc. 41). A review of the record shows Petitioner pled guilty on January 14, 2004 to one count of unlawful re-entry in violation of 8 U.S.C. § 1326(a) and (b)(1) and was sentenced to 70 months in prison on April 5, 2004. (Doc. 1, 17, 19). On May 19, 2005 this Court dismissed Petitioner's motion under 28 U.S.C. § 2255. (Doc. 29). Petitioner subsequently filed motions requesting reconsideration. (Doc. 31, 32). The Court treated them as second or successive motions under 28 U.S.C. § 2255 and forwarded them to the Tenth Circuit. (Doc. 33). Petitioner has filed another section 2255 motion arguing ineffective assistance of counsel and ineffective assistance of interpreter. (Doc. 41).

Under 28 U.S.C. § 2255, a successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain:

- (1) newly discovered evidence that, if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
 - (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.
- 28 U.S.C. § 2255 para. 8.

Under 28 U.S.C. § 2244(b)(3), an applicant shall move the appropriate court of appeals for an order authorizing the district court to consider a second or successive application for relief under § 2255. See *Leonard v. United States*, 383 F.3d 1146, 1147 (10th Cir. 2004). The record shows Petitioner did not obtain authorization from the Tenth Circuit Court of Appeals to file this successive § 2255 motion; therefore, this Court has no jurisdiction to consider the merits. See *United States v. Avila-Avila*, 132 F.3d 1347, 1348-1349 (10th Cir. 1997).

When an applicant files a successive § 2255 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. *Coleman v. United States*, 106 F.3d 339, 341 (10th Cir. 1997).

IT IS ORDERED FOR THE REASONS SET FORTH ABOVE that Petitioner's successive motion for relief pursuant to 28 U.S.C. § 2255 (Doc. 41) be transferred to the Tenth Circuit Court of Appeals pursuant to 28 U.S.C. § 1631.

IT IS FURTHERED ORDERED that the Clerk of the Court shall forward a copy of the Petitioner's motion (Doc. 41) and this order to the Clerk of the Tenth Circuit Court of Appeals for processing under 28 U.S.C. § 2244(b)(3).

SO ORDERED this 14th day of November, 2006.

s/ Wesley E. Brown

Wesley E. Brown, Senior U.S. District Judge