

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROBERT CAMILLE,	:	
	:	
Movant/Defendant,	:	
	:	
v.	:	Civ. A. No. 14-010-LPS
	:	Crim. A. No. 96-09-LPS
	:	
UNITED STATES OF AMERICA,	:	
	:	
Respondent/Plaintiff.	:	

MEMORANDUM

I. BACKGROUND

In June 1996, Movant Robert Camille pled guilty to car jacking (18 U.S.C. § 2119) and use of a firearm during and in relation to a violent crime (18 U.S.C. § 924(c)(1)). (D.I. 27) The Honorable Joseph J. Longobardi sentenced him to 175 months imprisonment. (D.I. 45) Movant's convictions and sentence were affirmed on direct appeal. (D.I. 51)

In 1998, Movant filed a *pro se* motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (D.I. 52), which the Honorable Joseph J. Farnan, Jr. denied as time-barred. *See United States v. Cammille*, 2001 WL 877578 (D. Del. Aug. 1, 2001).¹ In July 2013, Movant filed a Motion to Grant Good Faith for Time Served. (D.I. 90) The Court denied that Motion after construing it as a request to order the Bureau of Prisons ("BOP") to recalculate Movant's sentence. (D.I. 94)

On January 6, 2014, Movant filed a new § 2255 Motion, asserting that his sentence

¹The spelling of Movant's name in Westlaw differs from the actual spelling of Movant's name.

violates *United States v. Booker*, 543 U.S. 220 (2005), and *Blakely v. Washington*, 542 U.S. 296 (2004), because it “incorporated judicial factfinding under a preponderance standard.” (D.I. 95 at

1) Contending that *Booker* and *Blakely* apply retroactively to his case, Movant requests the Court to vacate his sentence.

II. STANDARD OF REVIEW

Pursuant to the Antiterrorism and Effective Death Penalty Act (“AEDPA”), a prisoner cannot file a second or successive motion under 28 U.S.C. § 2255 without first seeking and receiving approval from the appropriate court of appeals. *See* 28 U.S.C. § 2255 (h); 28 U.S.C. § 2244(b)(3)(A); Rule 9, Rules Governing Section 2255 Proceedings, 28 U.S.C. foll. § 2255.

Absent such authorization, a district court lacks jurisdiction to consider the merits of a subsequent § 2255 motion. *See* 28 U.S.C. § 2244(b)(4); *Pelullo v. United States*, 487 F. App’x 1, 2 n.2 (3d Cir. 2012); *In re Olabode*, 325 F.3d 166, 169-73 (3d Cir. 2003).

III. DISCUSSION

The instant § 2255 motion is Movant’s second request to vacate the sentence imposed for his convictions in 1996. The dismissal of Movant’s first § 2255 Motion as time-barred constitutes an adjudication on the merits, rendering the instant Motion second or successive for the gate-keeping purposes of 28 U.S.C. §§ 2244 (a) and 2255(h). *See Faines v. United States*, 2013 WL 6571679, *1 (D. Del. Dec. 12, 2013) (collecting cases). The record does not contain any indication that Movant obtained an order from the Third Circuit Court of Appeals allowing this Court to consider the pending § 2255 motion. Therefore, the Court will dismiss the instant


Motion for lack of jurisdiction.² See 28 U.S.C. § 2244(b)(1); *Robinson v. Johnson*, 313 F.3d 128, 139 (3d Cir. 2002) (if a movant files a second or successive motion “in a district court without the permission of a court of appeals, the district court’s only option is to dismiss the [motion] or transfer it to the court of appeals pursuant to 28 U.S.C. § 1631”).

The Court will also decline to issue a certificate of appealability because Movant has failed to make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); 3d Cir. L.A.R. 22.2 (2011); *United States v. Eyer*, 113 F.3d 470 (3d Cir. 1997).

IV. CONCLUSION

For the reasons stated above, the Court concludes that Movant’s § 2255 Motion constitutes an unauthorized second or successive § 2255 motion under 28 U.S.C. § 2244 and § 2255(h). Accordingly, the Court will dismiss Movant’s § 2255 Motion for lack of jurisdiction. A separate Order will be entered.

Dated: August 14, 2014


UNITED STATES DISTRICT JUDGE

²Movant may seek permission from the Third Circuit Court of Appeals to file a second or successive § 2255 motion. However, the Third Circuit has held that *Booker* does not provide a basis for granting a movant permission to file a second or successive § 2255 motion because it does not constitute a “new rule of constitutional law, made retroactive to cases on collateral review.” See *United States v. Olopade*, 403 F.3d 159 (3d Cir. 2005).

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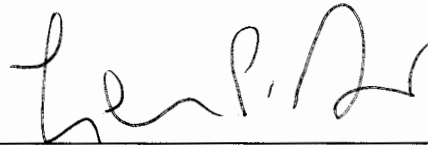
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UNITED STATES OF AMERICA,	:	
	:	
Respondent/Plaintiff.	:	

ORDER

At Wilmington this 14th day of August, 2014;

For the reasons set forth in the accompanying Memorandum issued this date, IT IS
HEREBY ORDERED that:

1. Movant Robert Cammille's unauthorized second or successive Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (D.I. 95) is **DISMISSED** and the writ is **DENIED** for lack of jurisdiction.
2. The Court declines to issue a certificate of appealability.
3. The Clerk shall mail a copy of this Memorandum and Order to Movant at his address on record. *See* Rule 4, 28 U.S.C. foll. § 2255. The Clerk is also directed to close the case.



UNITED STATES DISTRICT JUDGE