

UNITED STATES COURT OF APPEALS July 22, 2011

Elisabeth A. Shumaker  
Clerk of Court

FOR THE TENTH CIRCUIT

In re:

ARNOLD D. BUTLER,  
  
Petitioner.

No. 11-8033  
(D.C. No. 2:98-CR-00084-CAB-1)  
(D. Wyo.)

**ORDER**

Before **BRISCOE**, Chief Judge, **EBEL** and **MATHESON**, Circuit Judges.

Pro se petitioner Arnold D. Butler seeks an order directing the United States District Court for the District of Wyoming to re-open his criminal case and reduce his sentence. He alleges newly discovered evidence demonstrating that he is not a career offender. The petition appears to be seeking relief in the nature of mandamus, compelling action by the district court.

Mandamus is a drastic remedy, to be used only in extraordinary situations. *Weston v. Mann (In re Weston)*, 18 F.3d 860, 864 (10th Cir. 1994). “To be eligible for mandamus relief, the petitioner must establish (1) that he has a clear right to relief, (2) that the respondent’s duty to perform the act in question is plainly defined and peremptory, and (3) that he has no other adequate remedy.” *Rios v. Ziglar*, 398 F.3d 1201, 1206 (10th Cir. 2005).

Mr. Butler's petition does not meet this standard. We note that he has previously filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence and also a motion under Fed. R. Civ. P. 60(b) that was construed as an application to file a second or successive § 2255 motion. *See United States v. Butler*, 200 F. App'x 803, 804-05 (10th Cir. 2006). His current petition again seeks relief from his conviction or sentence. Therefore, his claim must be considered a successive § 2255 motion. *See United States v. Nelson*, 465 F.3d 1145, 1147 (10th Cir. 2006). To obtain the relief he seeks, Mr. Butler is required to file an application seeking authorization from this court to pursue a claim that "contain[s] newly discovered evidence or a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." *Id.* (alterations and internal quotation marks omitted). The court supplies a standard form for such motions.

Mr. Butler's petition is DENIED. His motion to proceed without prepayment of fees and costs is GRANTED.

Entered for the Court,



ELISABETH A. SHUMAKER, Clerk