

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 29, 2016

Elisabeth A. Shumaker
Clerk of Court

In re: ROY THOMAS CANNON,

Movant.

No. 16-6131
(D.C. No. 5:13-CR-00146-HE-1)
(W.D. Okla.)

ORDER

Before **TYMKOVICH**, Chief Judge.

Roy Thomas Cannon has filed a Motion for Authorization to File a Second or Successive Motion to Vacate, Set Aside or Correct Sentence based on the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015). We ordered the government to respond to the motion for authorization, specifically addressing whether this court is the "appropriate court of appeals" to consider authorization of a successive § 2255 motion challenging a sentence imposed by the United States District Court for the Middle District of Georgia. 28 U.S.C. § 2244(b)(3)(A).

Mr. Cannon was convicted in the Middle District of Georgia and sentenced by that court to a term of imprisonment followed by a term of supervised release. In 2013, after he had served his initial term of imprisonment, the Middle District of Georgia transferred jurisdiction to the Western District of Oklahoma for the purpose of overseeing Mr. Cannon's term of supervised release. When he later violated the terms of his supervised release, the district court for the Western District of Oklahoma revoked his

supervised release and sentenced him to a term of imprisonment to be followed by a term of supervised release. Mr. Cannon served the term of imprisonment imposed by the district court for the Western District of Oklahoma, and he is currently serving the supervised-release portion of that sentence.

Mr. Cannon now seeks authorization from this court to file a successive § 2255 motion in order to assert a challenge, based on the holding in *Johnson v. United States*, to the sentence imposed by the Middle District of Georgia. A challenge to that sentence must be brought in the Middle District of Georgia. *See United States v. Condit*, 621 F.2d 1096, 1097-98 (10th Cir. 1980). And 28 U.S.C. § 2244(b)(3)(A) provides that before bringing a successive challenge, Mr. Cannon must “move in the appropriate court of appeals for an order authorizing the district court to consider the application.” We conclude that the Eleventh Circuit is the appropriate court of appeals to entertain this motion for authorization to file a second or successive challenge to the sentence imposed by the Middle District of Georgia.

In the interest of justice and pursuant to 28 U.S.C. § 1631, we direct the clerk to transfer to the United States Court of Appeals for the Eleventh Judicial Circuit Mr. Cannon’s motion for authorization to file a second or successive § 2255 motion. We note that section 1631 dictates that the motion proceed in that court as if it had been filed there on May 18, 2016, the date it was filed in this court.

Entered for the Court



ELISABETH A. SHUMAKER, Clerk