

of appeals authorizing the district court to consider the motion, as required by [28 U.S.C. § 2255(h)].” Section 2255(h) requires certification based on, in this case, a new retroactive rule of constitutional law. 28 U.S.C. § 2255(h)(2). Here, the appellate panel found that Defendant could not rely on *Johnson*, the new constitutional ruling at issue. D.E. 243. Accordingly, under 28 U.S.C. § 2244(a), the Court is not “required to entertain” the motion. Defendant’s second or successive § 2255 motion has not been certified by the Court of Appeals, as required by § 2255(h) (“A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals.”).

The undersigned therefore **RECOMMENDS** that Defendant’s § 2255 motion (D.E. 234) be **DISMISSED** because it is a second or successive § 2255 motion that is not authorized by the Sixth Circuit.

The Court directs the parties to 28 U.S.C. § 636(b)(1) for appeal rights and mechanics concerning this Recommended Disposition, issued under subsection (B) of the statute. *See also* Rules Governing Section 2255 Proceedings, Rule 8(b). Within fourteen days after being served with a copy of this decision, any party may serve and file specific written objections to any or all findings or recommendations for determination, *de novo*, by the District Court. Failure to make a timely objection consistent with the statute and rule may, and normally will, result in waiver of further appeal to or review by the District Court and Court of Appeals. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 950 (6th Cir. 1981).

This the 3rd day of January, 2017.



Signed By:

Hanly A. Ingram

A handwritten signature in black ink, appearing to read "HAI", is written over the printed name "Hanly A. Ingram".

United States Magistrate Judge