IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA,

Plaintiff, : Case No. 3:09-cr-181
Also 3:16-cv-265

District Judge Walter H. Rice
Magistrate Judge Michael R. Merz

- vs -

ELMO BAILEY,

Defendant. :

TRANSFER ORDER

This case is before the Court upon the filing by Defendant Elmo Bailey of a Motion to Vacate under 28 U.S.C. § 2255 (ECF No. 110). Bailey correctly labels his filing as a "second" motion, and the docket reflects that he previously filed a Motion to Vacate (ECF No. 94) which the Court denied (ECF No. 98).

28 U.S.C. § 2255(h) provides that a "second or successive motion must be certified as provided in section 2244. . . ." Bailey has provided no such certificate. Under these circumstances, this Court has no jurisdiction to consider the merits of the new Motion. *Franklin v. Jenkins*, 839 F.3d 465(6th Cir. 2016); *Burton v. Stewart*, 549 U.S. 147 (2007). Instead, it must transfer the case to the Sixth Circuit Court of Appeals. *In re Sims*, 111 F.3d 45 (6th Cir. 1997).

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Accordingly the Clerk is ordered to transfer this case to the United States Court of Appeals for the Sixth Circuit for that court's determination of whether the case may proceed.

March 12, 2020.

s/ *Michael R. Merz*
United States Magistrate Judge