UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of October, two thousand eighteen.

Winifred Jiau,

Plaintiff - Appellant,

v.

United States of America,

Defendant - Appellee.

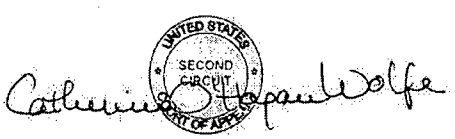
ORDER

Docket No: 18-1460

Appellant, Winifred Jiau, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request as a motion for reconsideration, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the motion and petition are denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



S.D.N.Y.–N.Y.C.
15-cv-380
Rakoff, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of August, two thousand eighteen.

Present:

Rosemary S. Pooler,
Denny Chin,
Christopher F. Droney,
Circuit Judges.

Winifred Jiau,

Plaintiff-Appellant,

v. 18-1460

United States of America,

Defendant-Appellee.

Appellant, pro se, moves to proceed in forma pauperis, for appointment of counsel, and for a certificate of appealability. Upon due consideration, it is hereby ORDERED that Appellant's motions are DENIED and the appeal is DISMISSED because Appellant has not shown that her motion "states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." 28 U.S.C. § 2253(c); *see also Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WINIFRED JIAU, Petitioner, -v- UNITED STATES OF AMERICA, Respondent.	15-cv-380 (JSR) (RWL) 11-cr-161-1 (JSR) ORDER

JED S. RAKOFF, U.S.D.J.

Before the Court is the latest petition by defendant and now pro se petitioner Winifred Jiau challenging her conviction for insider trading. On January 16, 2014, then Magistrate Judge James C. Francis issued a Report and Recommendation in the above-captioned matter recommending that the Court dismiss Ms. Jiau's pro se petition filed pursuant to 28 U.S.C. Section 2255. Ms. Jiau subsequently objected to certain portions of the Report and Recommendation in a submission dated December 5, 2016. Since her objections in material part presupposed the applicability of United States v. Newman, 773 F.3d 438 (2d Cir. 2014), and Ms. Jiau did not have the advantage of seeing the Supreme Court's decision in Salman v. United States, 137 S. Ct. 420 (2016), the Court sua sponte gave Ms. Jiau until January 5, 2017 to submit additional objections to her previously filed papers. The Government submitted opposition papers on January 17, 2017, and Ms. Jiau filed reply briefing on January 24, 2017. The Court has reviewed the objections and the underlying record de novo.

Having done so, the Court finds itself in complete agreement with Magistrate Judge Francis' Report and Recommendation, which is fully reinforced by the Supreme Court's decision in Salman. The Court therefore hereby adopts the Report and Recommendation's reasoning by reference.

Accordingly, the Court denies the petition with prejudice. In addition, because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253. Moreover, the Court certifies that any appeal from this Order would not be taken in good faith, as petitioner's claim lacks any arguable basis in law or fact, and therefore permission to proceed in forma pauperis is also denied. See 28 U.S.C. § 1915(a)(3); see also Selmon v. Emigrant Savs. Bank (In re Selmon), 421 F.3d 167, 169 (2d Cir. 2005).

SO ORDERED.

Dated: New York, NY
May 4, 2018

JED S. RAKOFF, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

WINIFRED JIAU,

Defendant.

15-cv-380 (JSR) (JCF)
11-cr-161-1 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

The Court is in receipt of Ms. Jiau's objections to the Report and Recommendation issued on November 16, 2016. Since her objections in material part presuppose the applicability of United States v. Newman, 773 F.3d 438 (2d Cir. 2014), and Ms. Jiau did not yet have the advantage of seeing the Supreme Court's decision in Salman v. United States, 137 S. Ct. 420 (2016), the Court sua sponte will give Ms. Jiau until January 5, 2017 to submit additional objections to her previously submitted papers, not to exceed 10 double spaced pages. The Government is ordered to respond to Ms. Jiau's objections no later than January 17, 2017, not to exceed the page length of Ms. Jiau's original and supplemental objections. Ms. Jiau may file a reply no later than January 24, 2017, not to exceed 10 double spaced pages.

SO ORDERED.

Dated: New York, NY
December 23, 2016

JED S. RAKOFF, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WINIFRED JIAU,

Petitioner,

- against -

THE UNITED STATES OF AMERICA,

Respondent.

15 Civ. 380 (JSR) (JCF)
11 Cr. 161-1 (JSR)

REPORT AND
RECOMMENDATION
[REDACTED]

TO THE HONORABLE JED S. RAKOFF, U.S.D.J.

Winifred Jiau, proceeding pro se, moves for a writ of habeas corpus pursuant to 28 U.S.C. § 2255. She argues that her sentence for securities fraud and conspiracy to commit securities fraud and wire fraud should be vacated, corrected, or set aside in light of United States v. Newman, 773 F.3d 438 (2d Cir. 2014), and because of purported prosecutorial misconduct, ineffective assistance of counsel, error in jury selection, and mistaken evidentiary rulings. For the reasons set forth below, her petition should be denied.

Background

A. The Crime

This prosecution arose out of the transmission of material nonpublic information about two public companies -- Marvell and NVIDIA -- by Ms. Jiau to two of her clients at Primary Global Research ("PGR"), where she was employed as a consultant. In or

about March 2006, Ms. Jiau was hired by Vista Research LLC ("Vista") as a consultant in the semiconductor industry. (Tr. at 298, 702).[1] Shortly thereafter, Samir Barai and Noah Freeman hired her to consult for their respective hedge funds. (Tr. at 288, 307-09). Mr. Barai was a portfolio manager at Tribeca Capital Management, and later became a portfolio manager at Barai Capital Management ("BCM"). (Tr. at 286-87, 389). Mr. Freeman was a research analyst at Sonar Capital Management ("Sonar"), and later became a portfolio manager at SAC Capital. (Tr. at 218, 251-55). At the request of Mr. Barai and Mr. Freeman, Ms. Jiau began to consult for them through PGR instead of Vista. (Tr. at 309-11, 325).

In or about March 2007, Ms. Jiau was hired as a contract employee in the finance department of NVIDIA, and remained in that position until November 2007. (Tr. at 597-98). While she was employed at NVIDIA, Ms. Jiau asked Son Ngoc Nguyen, another NVIDIA employee, to join an "investment club." (Tr. at 1143-44). The "club" was a quid pro quo arrangement between Ms. Jiau and Mr. Nguyen. He would give her nonpublic earnings and financial information about NVIDIA after her term of employment there ended,

[1] "Tr." refers to the transcript of Ms. Jiau's trial. "Sentencing Tr." refers to the transcript of her sentencing hearing.

and in return, she would give him stock tips based on inside information she received from contacts at other technology companies. (Tr. at 1144-45). Mr. Nguyen agreed to the arrangement, and Ms. Jiau encouraged him to seek out others to join the club. (Tr. at 1145, 1162-63). Mr. Nguyen recruited Stanley Ng, the SEC Reporting Manager at Marvell, who agreed to provide similar information about Marvell in exchange for inside information about other publicly traded companies from Ms. Jiau. (Tr. at 1163-67).

In October 2007, after the club was formed, Ms. Jiau advised Mr. Nguyen to buy stock in SanDisc, a publicly traded company. (Tr. at 1181-83). Based on the tip, Mr. Nguyen caused his wife to purchase 500 shares of SanDisc stock at approximately $48 per share. (Tr. at 1182-83). The tip did not prove to be fruitful, as the value of SanDisc shares decreased after the purchase. (Tr. at 1192-93). Mr. Nguyen and his wife lost money when they sold all of their shares in SanDisc in January 2008, causing Mr. Nguyen to lose faith Ms. Jiau's stock tips. (Tr. at 1192-93). The evidence at trial did not indicate whether Ms. Jiau ever gave Mr. Ng any stock tips. See United States v. Jiau, 734 F.3d 147, 153 (2d Cir. 2013). Ms. Jiau also provided various gifts to both men, including free meals at restaurants to both, a free iPhone to Mr.

the Government failed to prove that the tippers obtained a legally cognizable personal benefit in exchange for providing material nonpublic information to either defendant, or that the defendants had the requisite knowledge of the tipper's personal benefit.[6] Id. at 455. Accordingly, the panel dismissed the charges with prejudice. Id.

The jury instructions given by Judge Rakoff at the petitioner's trial required only that the tippers "anticipated some kind of benefit, however modest, such as stock tips or simply friendship." (The Court's Instructions of Law to the Jury at 11-12). This was no doubt a more relaxed standard for "personal benefit" than the one set out in Newman. It also did not require the petitioner to have knowledge of the personal benefit. The petitioner did not object to the definition of personal benefit in the jury instructions before the jury retired to deliberate.

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[6] On July 6, 2015, the Ninth Circuit departed from Newman in United States v. Salman, 792 F.3d 1087 (9th Cir. 2015), cert. granted, 136 S. Ct. 899 (2016). It held that a close family relationship between the tippee and tipper is sufficient to establish the personal benefit to the tipper needed to sustain a securities fraud conviction. Id. at 1093. The question of the tippee's knowledge of the tipper's personal benefit was not at issue in the case. Id. at 1091 n.2. On January 19, 2016, the Supreme Court granted certiorari to resolve the disagreement between the Second and Ninth Circuits on the meaning of "personal benefit." Salman v. United States, 136 S. Ct. 899 (2016); Petition for Writ of Certiorari, Salman v. United States, No. 15-628, 2015 WL 7180648 (U.S. Nov. 10, 2015). The Court heard oral argument in the case on October 5, 2016.

The instant petition for a writ of habeas corpus argues that the petitioner's conviction should be reversed because the jury instructions regarding personal benefit were inconsistent with the standard set out in Newman. (Petitioner's Motion to Vacate, Set Aside, or to Correct Sentence Pursuant to 22 U.S.C. 2255 and Memorandum of Law in Support ("Pet. Memo.") at 14-16). The petitioner takes particular issue with placing the "bar [] so low [as] friendship" and the use of the language "however modest." (Pet. Memo. at 15). She argues that the exclusion of this language would have led to a different result at trial because Mr. Nguyen and Mr. Ng never "received any beneficial piece of advice on [] stock trading." (Pet. Memo. at 15).

The petitioner procedurally defaulted this claim by failing to raise it before the jury retired to deliberate. See Countryman v. Farber, 340 F. App'x 703, 704 (2d Cir. 2009) (objections to jury instructions must be made "'on the record, stating distinctly the matter objected to and the grounds for the objection[]' before the case is submitted to the jury" (internal citation omitted) (quoting Fed. R. Civ. P. 51(c)(1))); Jarvis v. Ford Motor Co., 283 F.3d 33, 56-57 (2d Cir. 2002). Thus, to bring the claim on collateral review, the petitioner must establish either (1) cause for the default and prejudice arising therefrom or (2) actual innocence.

disclosure, such as a pecuniary gain or a reputational benefit that will translate into future earnings." Dirks, 463 U.S. at 663. It suggested that personal benefit may be inferred either from a "quid pro quo" or a "gift of confidential information to a trading relative or friend," id. at 664, but otherwise left unsettled the type or closeness of the personal relationship required. See Newman 773 F.3d at 452 (discussing the possibility that "Dirks suggests that a personal benefit may be inferred from a personal relationship between the tipper and tippee [alone]"). Newman explained that the standard for personal benefit, "although permissive, does not suggest that the Government may prove the receipt of a personal benefit by the mere fact of a friendship, particularly of a casual or social nature." Id. In short, Newman clarified ambiguous language in Dirks, reflecting an advance in the law regarding the personal benefit requirement, even if it did not overturn any binding precedent. The failure to forecast this advance cannot alone establish that counsel's conduct was objectively unreasonable.

Furthermore, the petitioner is unable to satisfy Strickland's prejudice prong. Although the Government characterized the petitioner's relationship with both Mr. Nguyen and Mr. Ng as friendship in summation (Tr. at 1426, 1448), the evidence at trial to prove the existence of a friendship with either man was weak.

judge at the time of issuing the writ shall direct.

(June 25, 1948, ch. 646, 62 Stat. 967.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 462 (R.S. § 762).

Section 462 of title 28, U.S.C., 1940 ed., was limited to alien prisoners described in section 453 of title 28, U.S.C., 1940 ed. The revised section extends to all cases of all prisoners under State custody or authority, leaving it to the justice or judge to prescribe the notice to State officers, to specify the officer served, and to satisfy himself that such notice has been given.

Provision for making due proof of such service was omitted as unnecessary. The sheriff's or marshal's return is sufficient.

Changes were made in phraseology.

§ 2253. Appeal

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

(June 25, 1948, ch. 646, 62 Stat. 967; May 24, 1949, ch. 139, § 113, 63 Stat. 105; Oct. 31, 1951, ch. 655, § 52, 65 Stat. 727; Pub. L. 104–132, title I, § 102, Apr. 24, 1996, 110 Stat. 1217.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 463(a) and 466 (Mar. 10, 1908, ch. 76, 36 [35] Stat. 40; Feb. 13, 1925, ch. 229, §§ 6, 13, 43 Stat. 940, 942; June 29, 1938, ch. 806, 52 Stat. 1232).

This section consolidates paragraph (a) of section 463, and section 466 of title 28, U.S.C., 1940 ed.

The last two sentences of section 463(a) of title 28, U.S.C., 1940 ed., were omitted. They were repeated in section 452 of title 28, U.S.C., 1940 ed. (See reviser's note under section 2241 of this title.)

Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in the second paragraph of section 2253 of title 28.

AMENDMENTS

1996—Pub. L. 104–132 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

"In a habeas corpus proceeding before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

"There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

"An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, unless the justice or judge who rendered the order or a circuit justice or judge issues a certificate of probable cause."

1951—Act Oct. 31, 1951, substituted "to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his" for "of removal issued pursuant to section 3042 of Title 18 or the" in second par.

1949—Act May 24, 1949, substituted "3042" for "3041" in second par.

§ 2254. State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

(Petitioner)

v.

(Respondent(s))

DECLARATION IN SUPPORT OF REQUEST TO PROCEED *IN FORMA PAUPERIS*

I, _____, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes ☐ No ☐
   a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer.
   b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.
2. Have you received within the past twelve months any money from any of the following sources?
   a. Business, profession or form of self-employment? Yes ☐ No ☐
   b. Rent payments, interest or dividends? Yes ☐ No ☐
   c. Pensions, annuities or life insurance payments? Yes ☐ No ☐
   d. Gifts or inheritances? Yes ☐ No ☐
   e. Any other sources? Yes ☐ No ☐

   If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.
3. Do you own cash, or do you have money in a checking or savings account?
   Yes ☐ No ☐ (Include any funds in prison accounts.)
   If the answer is "yes," state the total value of the items owned.
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?
   Yes ☐ No ☐
   If the answer is "yes," describe the property and state its approximate value.
5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____.
(date)

Signature of Petitioner

Certificate

I hereby certify that the petitioner herein has the sum of $_____ on account to his credit at the _____ institution where he is confined. I further certify that petitioner likewise has the following securities to his credit according to the records of said _____ institution:

Authorized Officer of Institution

(As amended Apr. 28, 1982, eff. Aug. 1, 1982; Apr. 26, 2004, eff. Dec. 1, 2004.)

MODEL FORM FOR USE IN 28 U.S.C. § 2254 CASES INVOLVING A RULE 9 ISSUE

Form No. 9

[Abrogated Apr. 30, 2007, eff. Dec. 1, 2007.]

Changes Made After Publication and Comments—Forms Accompanying Rules Governing § 2254 and § 2255 Proceedings. Responding to a number of comments from the public, the Committee deleted from both sets of official forms the list of possible grounds of relief. The Committee made additional minor style corrections to the forms.

§ 2255. Federal custody; remedies on motion attacking sentence

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by

motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(g) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

(June 25, 1948, ch. 646, 62 Stat. 967; May 24, 1949, ch. 139, §114, 63 Stat. 105; Pub. L. 104–132, title I, §105, Apr. 24, 1996, 110 Stat. 1220; Pub. L. 110–177, title V, §511, Jan. 7, 2008, 121 Stat. 2545.)

HISTORICAL AND REVISION NOTES

1948 ACT

This section restates, clarifies and simplifies the procedure in the nature of the ancient writ of error coram nobis. It provides an expeditious remedy for correcting erroneous sentences without resort to habeas corpus. It has the approval of the Judicial Conference of the United States. Its principal provisions are incorporated in H.R. 4233, Seventy-ninth Congress.

1949 ACT

This amendment conforms language of section 2255 of title 28, U.S.C., with that of section 1651 of such title and makes it clear that the section is applicable in the district courts in the Territories and possessions.

REFERENCES IN TEXT

Section 408 of the Controlled Substances Act, referred to in subsec. (g), is classified to section 848 of Title 21, Food and Drugs.

AMENDMENTS

2008—Pub. L. 110–177 designated first through eighth undesignated pars. as subsecs. (a) to (h), respectively.

1996—Pub. L. 104–132 inserted at end three new undesignated paragraphs beginning "A 1-year period of limitation", "Except as provided in section 408 of the Controlled Substances Act", and "A second or successive motion must be certified" and struck out second and fifth undesignated pars. providing, respectively, that "A motion for such relief may be made at any time." and "The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner."

1949—Act May 24, 1949, substituted "court established by Act of Congress" for "court of the United States" in first par.

APPROVAL AND EFFECTIVE DATE OF RULES GOVERNING SECTION 2254 CASES AND SECTION 2255 PROCEEDINGS FOR UNITED STATES DISTRICT COURTS

For approval and effective date of rules governing petitions under section 2254 and motions under section 2255 of this title filed on or after Feb. 1, 1977, see section 1 of Pub. L. 94–426, set out as a note under section 2074 of this title.

POSTPONEMENT OF EFFECTIVE DATE OF PROPOSED RULES AND FORMS GOVERNING PROCEEDINGS UNDER SECTIONS 2254 AND 2255 OF THIS TITLE

Rules and forms governing proceedings under sections 2254 and 2255 of this title proposed by Supreme Court order of Apr. 26, 1976, effective 30 days after adjournment sine die of 94th Congress, or until and to the extent approved by Act of Congress, whichever is earlier, see section 2 of Pub. L. 94–349, set out as a note under section 2074 of this title.

RULES GOVERNING SECTION 2255 PROCEEDINGS FOR THE UNITED STATES DISTRICT COURTS

(Effective Feb. 1, 1977, as amended to Jan. 7, 2011)

EFFECTIVE DATE OF RULES; EFFECTIVE DATE OF 1975 AMENDMENT

Rules, and the amendments thereto by Pub. L. 94–426, Sept. 28, 1976, 90 Stat. 1334, effective with respect to petitions under section 2254 of this title and motions under section 2255 of this title filed on or after Feb. 1, 1977, see section 1 of Pub. L. 94–426, set out as a note under section 2074 of this title.

Rule 1. Scope

These rules govern a motion filed in a United States district court under 28 U.S.C. §2255 by:

(a) a person in custody under a judgment of that court who seeks a determination that:

(1) the judgment violates the Constitution or laws of the United States;