

S.D.N.Y. - N.Y.C.  
05-cr-1157  
08-cv-7638  
16-cv-4987  
21-cv-8281  
Kaplan, 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 13<sup>th</sup> day of September, two thousand twenty-two.

Present:

John M. Walker, Jr.,  
Rosemary S. Pooler,  
Michael H. Park,  
*Circuit Judges.*

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Raheem Davis, AKA Raheen Davis,

*Petitioner,*

v.

22-6168

United States of America,

*Respondent.\**

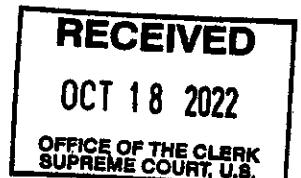
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Petitioner moves for leave to file a successive 28 U.S.C. § 2255 motion and for various other forms of relief. Upon due consideration, it is hereby ORDERED that the motion for leave to file a successive § 2255 motion is DENIED as unnecessary because the proposed § 2255 motion would not be successive within the meaning of § 2255(h). The matter is thus TRANSFERRED to the district court for further proceedings. *See* 28 U.S.C. § 1631.

A § 2255 motion is successive only if, *inter alia*, a prior § 2255 motion both challenged the same criminal judgment and was decided on the merits. *See Vu v. United States*, 648 F.3d 111, 113 (2d Cir. 2011). Petitioner's original judgment of conviction and his first amended judgment of conviction were entered in 2008. *See* S.D.N.Y. 05-cr-1157, docs. 227 (Judgment), 229

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\* The Clerk of Court is respectfully directed to amend the caption accordingly.



(Amended Judgment). After a successful § 2255 motion in 2016, the district court entered a second amended judgment in 2020. *See* S.D.N.Y. 05-cr-1157, doc. 297 (Second Amended Judgment).

Petitioner's first two § 2255 motions, filed in 2008 and 2016, are not relevant to determining whether the present proposed § 2255 motion would be successive because they preceded the 2020 second amended judgment. *See Magwood v. Patterson*, 561 U.S. 320, 333, 341–42 (2010) (holding that “the phrase ‘second or successive’ must be interpreted with respect to the judgment challenged” so that where “there is a new judgment intervening between the two habeas petitions, an application challenging the resulting new judgment is not ‘second or successive’ at all”) (internal quotation marks and citation omitted); *see also Johnson v. United States*, 623 F.3d 41, 46 (2d Cir. 2010) (holding under *Magwood* that, when a petitioner’s first § 2255 motion results in an amended judgment, his second § 2255 motion “would not be successive because it is his first § 2255 motion challenging the amended judgment of conviction”).

Further, while Petitioner sought § 2255 relief in the district court regarding the 2020 amended judgment, the district court did not decide those challenges “on the merits” within the meaning of the successive rules. *See Graham v. Costello*, 299 F.3d 129, 133 (2d Cir. 2002) (holding that a petition is denied “on the merits” when the federal court “conclusively determined that the claims presented could not establish a ground for federal habeas relief.”).

It is further ORDERED that Petitioner’s motions for other forms of relief are DENIED as moot or unnecessary. To the extent Petitioner requests that the Court serve his papers on the Government, we are informed that the Government has received notice of Petitioner’s filings and will receive notice of the present order; once this matter is before the district court, any further problems with service or completing forms should be brought to the attention of that court.

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

  
Catherine O'Hagan Wolfe