Appendix A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 22-10777-J

TIMOTHY EUGENE BROWN,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ORDER:

Timothy Brown, a federal prisoner, moves this Court for a certificate of appealability ("COA"), so that he may appeal the denial of his 28 U.S.C. § 2255 motion. Because reasonable jurists would not debate that denial, Brown's motion for a COA is DENIED. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

UNITED STATES CIRCUIT JUDGE

Appendix B

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Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

Before: BRANCH and LUCK, Circuit Judges.

BY THE COURT:

Timothy Brown has filed a motion for reconsideration of this Court's November 10, 2022, order denying a certificate of appealability and denying leave to proceed *in forma pauperis* as moot. Upon review, his motion is DENIED because he has offered no new evidence or argument of merit to warrant reconsideration.

Appendix C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-81444-CIV-MARRA
(17-80043-CR-MARRA)

TIMOTHY EUGENE BROWN,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.
_____/

ORDER OF DISMISSAL

THIS CAUSE is before the Court upon a *pro se* Motion to Vacate under 28 U.S.C. § 2255 [ECF No. 1]. Movant, Timothy Eugene Brown, attacks the legality of his sentence and criminal judgment, entered after a guilty plea, in Case No. 17-CR-80043-MARRA. *See id.* But Movant has already filed a § 2255 motion to vacate attacking that very same conviction and sentence which the Court denied. *See Brown v. United States*, No. 18-CV-81095 (S.D. Fla. Sept. 21, 2021), ECF No. 32. For the following reasons, and because Movant has not obtained pre-authorization from the Eleventh Circuit to file this Motion, his Motion must be **DISMISSED** for lack of subject-matter jurisdiction.

STANDARD OF REVIEW

"Article III generally requires a federal court to satisfy itself of its jurisdiction over the subject matter before it considers the merits of a case." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999); *see also Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 160 (2010) ("Jurisdiction refers to a court's adjudicatory authority." (cleaned up)); *In re Trusted Net Media Holdings, LLC*, 550 F.3d 1035, 1042 (11th Cir. 2008) (describing a court's "independent

obligation to determine whether subject-matter jurisdiction exists" (cleaned up)). For this reason, "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3). And, of course, "the party invoking the court's jurisdiction bears the burden of proving, by a preponderance of the evidence, facts supporting the existence of federal jurisdiction." *McCormick v. Aderholt*, 293 F.3d 1254, 1257 (11th Cir. 2002).

ANALYSIS

"Before a prisoner may file a second or successive habeas petition [in the district court], [he] first must obtain an order from the court of appeals authorizing the district court to consider the petition [pursuant to] 28 U.S.C. § 2244(b)(3)(A)." *Thomas v. Sec'y, Fla. Dep't of Corr.*, 737 F. App'x 984, 985 (11th Cir. 2018); 28 U.S.C. § 2255(h). "Absent such an order, the district court lacks jurisdiction to consider a second or successive habeas petition." *Thomas*, 737 F. App'x at 985; *see also Burton v. Stewart*, 549 U.S. 147, 157 (2007) ("Burton neither sought nor received authorization from the Court of Appeals before filing his 2002 petition, a 'second or successive' petition challenging his custody, and so the District Court was without jurisdiction to entertain it.").

Here, Movant contends his criminal judgment entered in Case No. 17-CR-80043-MARRA is illegal because due process requires his unlawful sentence under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e), be vacated. [ECF. No. 1 at 4]. Movant acknowledges that he did not obtain pre-authorization from the Eleventh Circuit to initiate this action.

The Motion, as such, is "second or successive" in violation of 28 U.S.C. § 2244(b). *See Panetti v. Quarterman*, 551 U.S. 930, 947 (2007) ("In the usual case, a petition filed second in time and not otherwise permitted by the terms of § 2244 will not survive AEDPA's 'second or successive' bar."). To be sure, "the phrase 'second or successive' is not self-defining and does not refer to all habeas applications filed second or successively in time." *Stewart v. United States*, 646

F.3d 856, 859 (11th Cir. 2011) (citing *Panetti*, 551 U.S. at 943–44). So, if the Movant could satisfy one of the well-established exceptions to the proscription against "second or successive" petitions,[1] then the Court might have authority to consider it. *See, e.g.*, *Boyd*, 754 F.3d at 1303.

The Court concludes that none of these exceptions apply. Nevertheless, Movant argues his Motion is non-successive because he bases it on a claim that was unavailable to him at the time of his initial motion's filing. The claim on which Movant bases his successive Motion is the Eleventh Circuit's holding in *United States v. Jackson*, 36 F.4th 1294, 1306 (11th Cir. 2022) that prior Florida convictions for sale of cocaine and possession with intent to sell cocaine were not predicate "serious drug offenses" under the ACCA. However, new decisional case law does not render a § 2255 motion non-successive; instead, it is one of two potentially valid bases for the "appropriate court of appeals" to give the Movant authorization to file a successive motion. *See* 28 U.S.C. § 2255(h). In other words, *Jackson* does not confer subject matter jurisdiction on this Court unless the Eleventh Circuit says so first.[2]

[1] For instance, a "vacatur-based claim [that] did not exist until after the proceedings on [an] initial § [2254 petition or] § 2255 motion concluded" is not, technically speaking, "second or successive." *Boyd v. United States*, 754 F.3d 1298, 1302 (11th Cir. 2014). Similarly, where a "resentencing [leads] to a new judgment, [a subsequent § 2254 petition or § 2255 motion] challenging that new judgment cannot be 'second or successive' such that § 2244(b) would apply." *Magwood v. Patterson*, 561 U.S. 320, 331 (2010). Likewise, "when [a subsequent § 2254] petition [or § 2255 motion] is the first to challenge a new judgment, it is not 'second or successive,' regardless of whether its claims challenge the sentence or the underlying conviction." *Insignares v. Sec'y, Fla. Dep't of Corr.*, 755 F.3d 1273, 1281 (11th Cir. 2014). Finally, if a claim only ripens after the conclusion of both the petitioner's direct *and* collateral reviews, the claim might not be "second or successive." *See Scott v. United States*, 890 F.3d 1239, 1256 (11th Cir. 2018). But, for this last exception to apply, the claim's very un-ripeness must have prevented the habeas petitioner from asserting the question at issue in the petition. *See id.* at 1249 (citing *Magwood*, 561 U.S. at 345 (Kennedy, J. dissenting)).

[2] The Court also notes that the *Jackson* decision was vacated by the Eleventh Circuit Court of Appeals on September 8, 2022. Therefore, at the present time, the *Jackson* decision is of no benefit to Movant.