

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

|                          |   |                            |
|--------------------------|---|----------------------------|
| United States of America | ) |                            |
|                          | ) | Cr. No. 6:03-616-HMH       |
| vs.                      | ) |                            |
|                          | ) | <b>OPINION &amp; ORDER</b> |
| Carlos Demond Robinson,  | ) |                            |
|                          | ) |                            |
| Movant.                  | ) |                            |

This matter is before the court on Carlos Demond Robinson’s (“Robinson”) motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On May 26, 2004, after a jury trial, Robinson was found guilty of conspiracy to possess and possession with intent to distribute crack cocaine and cocaine in violation of 21 U.S.C. § 841(b)(1)(A), two counts of possession with intent to distribute 50 grams or more of crack cocaine and a quantity of cocaine in violation of 21 U.S.C. § 841(b)(1)(A), two counts of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g), and two counts of using and carrying a firearm during and in relation to a drug trafficking crime in violation of 18 U.S.C. § 924(c). On December 13, 2004, Robinson was sentenced to 960 months’ imprisonment. Robinson appealed the conviction and sentence on December 28, 2004. On March 22, 2007, the Fourth Circuit remanded the case pursuant to United States v. Booker, 543 U.S. 220 (2005), for resentencing under the advisory guidelines. United States v. Robinson, No. 05-4028, 2007 WL 869159, at \*7 (4th Cir. Mar. 22, 2007) (unpublished).

On June 18, 2007, at resentencing, based on the advisory sentencing guidelines, the court again imposed a 960-month sentence. On June 22, 2007, Robinson appealed the conviction and sentence. The Fourth Circuit affirmed Robinson's conviction and sentence on February 14, 2008. United States v. Robinson, No. 07-4638, 2008 WL 398245, at \*2 (4th Cir. Feb. 14, 2008) (unpublished). Robinson subsequently filed a motion to vacate, set aside, or correct his sentence under § 2255. The court summarily dismissed Robinson's motion on October 27, 2008. United States v. Robinson, Cr. No. 6:03-616-HMH, 2008 WL 4833015, at \*5 (D.S.C. Oct. 27, 2008) (unpublished). Robinson appealed, and the Fourth Circuit dismissed his appeal. United States v. Robinson, No. 08-8465, 2009 WL 3651641, at \*1 (4th Cir. Nov. 5, 2009) (unpublished). On August 5, 2010, Robinson filed a motion for relief from judgment pursuant to Rule 60 of the Federal Rules of Civil Procedure. Finding his claims without merit, the court denied his motion. United States v. Robinson, Cr. No. 6:03-616-HMH (D.S.C. Aug. 11, 2010) (unpublished). Robinson appealed, and the Fourth Circuit dismissed the appeal. United States v. Robinson, No. 10-7197, 2011 WL 880761, at \*1 n.\* (4th Cir. Mar. 15, 2011) (unpublished). On July 27, 2011, Robinson filed a motion to alter or amend the record, which was construed as a § 2255 motion because it attacked his § 924(c) conviction and sentence, and it was dismissed as successive on August 8, 2011. United States v. Robinson, Cr. No. 6:03-616-HMH, 2011 WL 13238748, at \*1 (D.S.C. Aug. 8, 2011) (unpublished). Robinson filed another § 2255 motion on November 12, 2014, which was dismissed as successive on December 1, 2014. United States v. Robinson, Cr. No. 6:03-616-HMH, 2014 WL 12634793 (D.S.C. Dec. 1, 2014) (unpublished).

On July 13, 2016, the Fourth Circuit granted Robinson's application requesting permission to file a second or successive § 2255 motion in light of Johnson v. United States,

135 S. Ct. 2551 (2015). The court dismissed the § 2255 motion on July 18, 2016. United States v. Robinson, Cr. No. 6:03-616-HMH, 2016 WL 7496167, at \*3 (D.S.C. July 18, 2016) (unpublished). Robinson appealed, and the Fourth Circuit dismissed the appeal on January 12, 2017. United States v. Robinson, 672 F. App'x 330, 330 (4th Cir. Jan. 12, 2017) (unpublished). Pursuant to § 404 of the First Step Act, on June 10, 2020, the court reduced the Defendant's sentence from 960 months' imprisonment to 601 months' imprisonment. United States v. Robinson, Cr. No. 6:03-616-HMH, 2020 WL 3071939, at \*3 (D.S.C. June 10, 2020) (unpublished). An amended judgment was entered on June 10, 2020. (Am. J., ECF No. 444.) On August 19, 2020, Robinson filed a motion for compassionate release, which was denied on September 18, 2020. Robinson appealed the denial of his motion for compassionate release, and the Fourth Circuit affirmed the court's decision on October 26, 2021. United States v. Robinson, No. 20-7451, 2021 WL 4957598, at \*1 (4th Cir. Oct. 26, 2021) (unpublished).

Robinson filed a renewed motion for compassionate release on September 2, 2022. In addition, Robinson filed the instant § 2255 motion on August 31, 2022, and a motion to hold his § 2255 motion in abeyance pending the determination of his motion for compassionate release.<sup>1</sup> (§ 2255 Mot., ECF Nos. 463, 464.) In the instant § 2255 motion, Robinson alleges that he is actually innocent of his second conviction under § 924(c). (§ 2255 Mot., generally, ECF No. 464.) Specifically, he contends that “the fact that I sold drugs (2) times while armed in the same Drug Conspiracy with the same gun should not be counted as TWO Section 924(c) violations, because the Third (3rd) one cannot be qualified as a Subsequent Violation as defined by Congress.” (Id. 8, ECF No. 464.) This matter is now ripe for consideration.

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<sup>1</sup> See Houston v. Lack, 487 U.S. 266 (1988).

## II. DISCUSSION OF THE LAW

As an initial matter, the court finds that Robinson’s § 2255 motion is a second or successive motion. “[W]hen a habeas petition is the first to challenge a new judgment, it is not second or successive within the meaning of § 2244(b), regardless of whether it challenges the sentence or the underlying conviction.” In re Gray, 850 F.3d 139, 143 (4th Cir. 2017). An amended judgment was entered after the court reduced Robinson’s sentence pursuant to § 404 of the First Step Act. However, “a sentence reduction under the First Step Act does not constitute a new judgment for purposes of AEDPA’s bar on second or successive habeas petitions.” Teley v. United States, 20 F.4th 735, 745-46 (11th Cir. 2021).<sup>2</sup>

“[A] prisoner seeking to file a successive application in the district court must first obtain authorization from the appropriate court of appeals.” United States v. Winestock, 340 F.3d 200, 205 (4th Cir. 2003) (citing 28 U.S.C. § 2244(b)(3)), abrogated in part on other grounds by United States v. McRae, 793 F.3d 392, 397-400 (4th Cir. 2015). “The court of appeals must examine the application to determine whether it contains any claim that satisfies . . . § 2255.” Id. The classes of claims that satisfy § 2255 are few. The applicant must come forward with “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.” 28 U.S.C. § 2255(h)(1). Alternatively, the applicant may cite “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.” Id. § 2255(h)(2); see also In re Vassell, 751 F.3d 267, 269 (4th Cir. 2014) (“Under this

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<sup>2</sup> Research did not reveal any Fourth Circuit case addressing this issue.

procedure, “[t]he court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of [§ 2244(b)]’ – namely, as relevant here, that the application presents a claim that ‘relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.’”). In the absence of pre-filing authorization from the court of appeals, the district court is without jurisdiction to consider a second or successive application. Winestock, 340 F.3d at 205.

Robinson has not obtained authorization from the appropriate United States Court of Appeals to proceed with a second or successive § 2255 motion. Because Robinson has previously filed a § 2255 motion that was adjudicated on the merits, the instant motion is successive. See (Jul. 18, 2016 Opinion and Order, ECF No. 347.) And because Robinson failed to obtain pre-filing authorization, the court lacks jurisdiction over this successive § 2255 motion.

Nevertheless, even if Robinson’s § 2255 motion were not second or successive, it would still be time-barred. A movant seeking habeas relief under § 2255 is subject to a one-year statute of limitations. The one-year period to file a § 2255 motion commences upon the latest of the following dates:

- (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.

§ 2255(f). In this case, the one-year limitation period began to run on the date that Robinson's amended judgment became final, which was June 24, 2020, when the time for filing a direct appeal from the amended judgment expired. Fed. R. App. P. 4(b)(1)(A). Thus, the one-year limitation period expired on June 24, 2021. However, Robinson waited until August 31, 2022, to file the instant motion.<sup>3</sup> Further, there is no basis for the application of § 2255(f)(2), (3), or (4). Robinson has not alleged any impediment to filing a timely motion, he does not rely on any new rule of law that has been made retroactive to cases on collateral review, and all of the facts supporting this claim could have been discovered through the exercise of due diligence as of the date when the amended judgment was entered.

Generally, the court may not dismiss a motion under § 2255 as untimely sua sponte without affording the movant the opportunity to explain why the statute of limitations under § 2255 should be equitably tolled to allow him to proceed. See Hill v. Braxton, 277 F.3d 701, 707 (4th Cir. 2002); United States v. Sexton, No. 02-6273, 2003 WL601443, at \*1 (4th Cir. Feb. 28, 2003) (unpublished) (applying Hill to a motion brought under § 2255). However, the court may dismiss the motion as untimely if "it is indisputably clear from the materials presented to

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<sup>3</sup> See Houston v. Lack, 487 U.S. 266 (1988) (holding that a prisoner's pleading is deemed filed on the date it is delivered to prison authorities for mailing). The court notes that Robinson dated his § 2255 motion August 21, 2022. However, even utilizing this date as the filing date, the instant motion was filed approximately one year after the expiration of the limitations period.

the district court that the [motion] is untimely and cannot be salvaged by equitable tolling principles . . . .” Hill, 277 F.3d at 707. Here, it is undisputably clear from the materials presented that Robinson’s motion is time-barred, and equitable tolling principles do not apply because his claim fails on the merits. Robinson was found guilty of conspiracy to possess and possession with intent to distribute crack cocaine and cocaine in violation of 21 U.S.C. § 841(b)(1)(A), two counts of possession with intent to distribute 50 grams or more of crack cocaine and a quantity of cocaine in violation of 21 U.S.C. § 841(b)(1)(A), two counts of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g), and two counts of using and carrying a firearm during and in relation to a drug trafficking crime in violation of 18 U.S.C. § 924(c).

First, when Robinson was convicted in the instant case, he had a prior, final § 924(c) conviction. (Presentence Investigation Report ¶ 63.); United States v. Clark, No. 11-CR-30-2-JPS, 2020 WL 4260824, at \*3 (E.D. Wis. July 23, 2020) (“[Movant’s] motion must be denied because the sentence that he would have received in 2012 is exactly the same as the one he would have received today. Recall that 924(c)(1)(C) was amended to clarify that the 25-year stacking provision for multiple, subsequent 924(c) convictions only applies if the defendant was previously convicted of a 924(c) offense *in another case*. Therefore, if the defendant already had a 924(c) conviction in a separate case, then the stacking provision would be applicable as a mandatory, consecutive term. ” (emphasis in original)) Therefore, Robinson’s two § 924(c) convictions in the instant case were correctly stacked.

In addition, Robinson’s argument that “the fact that I sold drugs (2) times while armed in the same Drug Conspiracy with the same gun should not be counted as TWO Section 924(c)

violations, because the Third (3rd) one cannot be qualified as a Subsequent Violation as defined by Congress” is without merit because Robinson was convicted of multiple drug crimes. (§ 2255 Mot. 8, ECF No. 464.) In addition to the drug conspiracy charge, he was found guilty of two counts of possession with intent to distribute 50 grams or more of crack cocaine and a quantity of cocaine in violation of 21 U.S.C. § 841(b)(1)(A), and two counts of using and carrying a firearm during and in relation to a drug trafficking crime in violation of 18 U.S.C. § 924(c). Each of Robinson’s § 924(c) convictions in this case is connected to a distinct and separate conviction for a drug trafficking crime. Robinson was convicted of two drug trafficking crimes: (1) possession with intent to distribute cocaine on February 2, 2003, and (2) possession with intent to distribute cocaine and cocaine base on October 30, 2002. Moreover, Robinson was convicted of two § 924(c) violations: (1) possessing a firearm on February 2, 2003, in furtherance of a drug trafficking crime, and (2) possessing a firearm on October 30, 2002, in furtherance of a drug trafficking crime. (Superseding Indictment, ECF No. 49.) Therefore, both § 924(c) convictions are subsequent violations resulting in a sentence of 300 months’ consecutive as to each count. Based on the foregoing, Robinson’s claim that he is actually innocent of the second § 924(c) offense is without merit.

It is therefore

**ORDERED** that Robinson's § 2255 motion, docket number 464, is dismissed. It is further

**ORDERED** that Robinson's motion to "hold motion to vacate sentence and conviction pursuant to Section 2255," docket number 463, is denied. It is further

**ORDERED** that a certificate of appealability is denied because Robinson has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

**IT IS SO ORDERED.**

s/Henry M. Herlong, Jr.  
Senior United States District Judge

Greenville, South Carolina  
October 4, 2022

#### **NOTICE OF RIGHT TO APPEAL**

The Movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.