

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 4-89-92(5) (DSD)  
Civil No. 99-29 (DSD)

John Gregory Lambros,

Petitioner,

v.

**ORDER**

United States of America,

Defendant.

This matter is before the court on petitioner's motion to vacate all judgments and orders [Doc. No. 237]. For the following reasons, the court dismisses the motion. The petitioner has also filed several other motions which are related to the motion to vacate including: (1) a motion for disclosure of documents filed by United States District Court Judge Robert Reaser [Doc. No. 241]; (2) a motion for extension of time to respond [Doc. No. 242]; (3) a motion for appointment of counsel [Doc. No. 244]; and (4) a motion to disclose current investigation by the Minnesota Office of Lawyers' Professional Responsibility [Doc. No. 247]. Because the court concludes that these motions are collateral to the substantive motion which is being dismissed and since the court concludes that it lacks jurisdiction over this matter, the court will dismiss all of these motions.

MAR 8 2002

FILED  
RICHARD H. STEINER, CLERK  
District Court No. \_\_\_\_\_  
Deputy Clerk's Office \_\_\_\_\_

### BACKGROUND

In 1993, petitioner John Gregory Lambros was convicted of several drug trafficking offenses after a jury trial. His initial sentence of life imprisonment was vacated on appeal by the Eighth Circuit Court of Appeals. The Eighth Circuit affirmed his conviction in all other respects and remanded the matter for resentencing. He was resentenced in 1997 to 360 months imprisonment. The Eighth Circuit later affirmed the resentencing.

The present petition marks Lambros's fifth post-conviction collateral attack on his conviction and sentence. The first such petition was filed at the time of his resentencing. Although described as a motion pursuant to Fed. R. Crim. P. 33, the district court construed it as a petition for § 2255 habeas corpus relief and denied it. Lambros filed a second petition on April 18, 1997, which was denied as successive.<sup>1</sup> Lambros's third petition was filed on January 7, 1999. The district court dismissed it for lack of jurisdiction because Lambros had not obtained authorization from the Eighth Circuit to file a successive petition for habeas relief. The Eighth Circuit affirmed the dismissal of the third petition in an unpublished order. Lambros's fourth petition was filed in the Eighth Circuit on June 29, 2001, as a motion for leave to file a second or successive § 2255 petition. The Eighth Circuit has not

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<sup>1</sup> The district court alternatively concluded that this second petition lacked merit.

yet ruled on that petition. Now, Lambros brings the present motion to vacate all judgments and orders by the United States District Court pursuant to Rule 60(b)(6). Although petitioner purports to bring this motion under Rule 60(b)(6) of the Federal Rules of Civil Procedure, the court concludes that it must be treated as a petition pursuant to 28 U.S.C. § 2255 since Lambros is attempting to collaterally attack his conviction and sentence. See Bolder v. Armstrong, 385 F.2d 98, 99 (8<sup>th</sup> Cir. 1993); Blair v. Armstrong, 976 F.2d 1130, 1134 (8<sup>th</sup> Cir. 1992).

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a Federal prisoner must obtain certification from the appropriate court of appeals prior to filing a second or successive petition for habeas relief in the district court. 28 U.S.C. § 2255 (2001). The Eighth Circuit has held that this prior certification rule is "absolute." Boykin v. United States, 2000 WL 1610732, \*1 (8<sup>th</sup> Cir. 2000). When a prisoner fails to comply with the certification requirement, the district court lacks the power and authority to entertain the motion. *Id.*, see also United States v. Allen, 157 F.3d 661, 664 (9<sup>th</sup> Cir. 1998); Nelson v. United States, 113 F.3d 136, 136 (2<sup>nd</sup> Cir. 1997). Because the present motion to vacate is a successive § 2255 petition for which Lambros

has not obtained permission from the Eighth Circuit Court of Appeals to file, this court lacks jurisdiction to hear the petition and must dismiss it accordingly.<sup>2</sup>

Moreover, because petitioner's several other motions are related to and dependant upon the motion to vacate, and since this court lacks jurisdiction, all of petitioner's other motions must be dismissed on the same basis.

#### CONCLUSION

Accordingly, **IT IS HEREBY ORDERED** that:

1. Petitioner's motion to vacate all judgments and orders [Docket No. 237] is dismissed;
2. Petitioner's motion for disclosure [Docket No. 241] is dismissed;
3. Petitioner's motion for extension of time [Docket 242] is dismissed;


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<sup>2</sup> The court also concludes that, even if Lambros were to apply to the Eighth Circuit for permission to file a successive petition based on the alleged "conflict of interest" on the part of Judge Renner, such permission would be unlikely to be granted since petitioner's claim does not fit either of the two criteria set forth in 28 U.S.C. § 2255 as providing a basis for permitting the filing of a successive petition. The fact that Judge Renner previously was the United States Attorney for the District of Minnesota does not constitute newly discovered evidence nor does it provide a new rule of constitutional law. Moreover, Judge Renner did not preside over Lambros's trial but only entered the case several years after petitioner's conviction at the time of his resentencing.

4. Petitioner's motion for appointment of counsel [Docket No. 244] is dismissed; and

5. Petitioner's motion to disclose current investigation [Docket No. 247] is dismissed.

Dated: March 8, 2002

  
David S. Doty, Judge  
United States District Court