

Gammon v. United States

07-CV-333-SM 01/28/08

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Frank J. Gammon

v.

Civil No. 07-cv-333-SM

Opinion No. 2008 DNH 022

United States of America

**ORDER**

Petitioner has filed a pleading ostensibly seeking relief from his conviction and sentence under the provisions of 28 U.S.C. § 2255. However, his claims seem to be entirely related to the current conditions of his federal confinement, particularly allegedly deficient medical care.

With respect to his asserted challenge to his conviction and sentence, this court is without jurisdiction to consider the matter since he filed an earlier § 2255 petition in 2001 (Case No. 01-cv-435-M). Therefore, the current petition is a second or successive petition for which permission to file must first be obtained from the court of appeals. See 28 U.S.C. § 2255 Para. 7.

Secondly, to the extent petitioner seeks relief from his sentence for violating the term of his supervised release, he raises no meritorious issues. The petition and the files and

records of the case conclusively show that petitioner is entitled to no relief in that the violation was established, the sentence was lawful, and was within this court's jurisdiction, and no denial or infringement of any constitutional right occurred. In fact, petitioner makes no such claim.

Petitioner is complaining about medical care provided by the Bureau of Prisons, and his best avenue for relief in that regard is the administrative remedies available to him, or, if those fail, legal remedies in the jurisdiction in which he is held. See, e.g., 42 U.S.C. § 1983.

Transferring this petition to the court of appeals for its consideration rather than dismissing it here would merely impose an unwarranted burden on that court since petitioner makes no effort to justify a second petition, and, the asserted grounds do not warrant relief under § 2255.

The petition is dismissed.

**SO ORDERED.**

  
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Steven J. McAuliffe  
Chief Judge

January 28, 2008

cc: Frank J. Gammon, pro se  
Aixa Maldonado-Quinones, Esq.