

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

RICHARD ASHBAUGH,

Petitioner,

v.

**CIVIL ACTION NO. 3:14-CV-31
CRIMINAL ACTION NO. 3:05-CR-60-1
(BAILEY)**

UNITED STATES OF AMERICA,

Respondent.

ORDER DISMISSING PETITION

On this day, the above-styled matter came before the Court for consideration of the Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody [Civ. Doc. 1 / Crim. Doc. 112], the Emergency Motion to Correct Sentence Under 28 U.S.C. § 2255 [Civ. Doc. 2 / Crim. Doc. 113], the Government's Motion to Dismiss Petition [Crim. Doc. 119], and the petitioner's Reply to the Government's Motion to Dismiss [Crim. Doc. 129], which is docketed as a Motion for Resentencing, Motion for Evidentiary Hearing, and Motion to File Under § 2244 for Second or Successive Application to the Fourth Circuit Court of Appeals.

On October 25, 2007, this Court adopted the magistrate judge's Report and Recommendation [Crim. Doc. 100], thereby denying and dismissing the petitioner's § 2255 petition. As previously noted, the petitioner filed a second § 2255 on March 12, 2014 [Doc. 112]. Subsequently, the petitioner filed a motion under § 2244 for a second or successive application with the Fourth Circuit Court of Appeals [Crim. Doc. 129]. This Court finds this

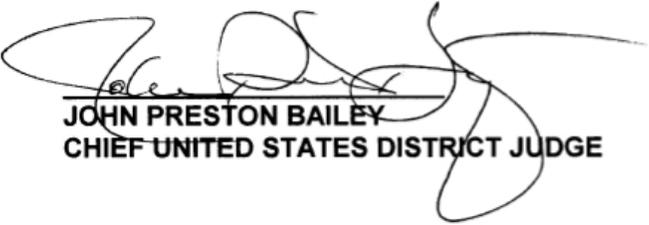
matter is now properly before the Appellate Court for consideration. If granted the requested relief to file a second or successive § 2255 petition, the petitioner must do so in a new action.

Accordingly, this Court hereby **DENIES** the § 2255 petition [**Civ. Doc. 1 / Crim. Doc. 112**], the Emergency Motion to Correct Sentence Under 28 U.S.C. § 2255 [**Civ. Doc. 2 / Crim. Doc. 113**], the Government's Motion to Dismiss Petition [**Crim. Doc. 119**], and the petitioner's Reply to the Government's Motion to Dismiss [**Crim. Doc. 129**]. Accordingly, the Court hereby **DIRECTS** the Clerk to **DISMISS** this action **WITHOUT PREJUDICE** and to **STRIKE** it from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit by certified mail a copy of this Order to any counsel of record and the *pro se* petitioner.

DATED: July 3, 2014.



JOHN PRESTON BAILEY
CHIEF UNITED STATES DISTRICT JUDGE