

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LEO F. SCHWEITZER, III

PLAINTIFF,

v.

UNITED STATES,

DEFENDANT.

Crim. No. 95-200

MEMORANDUM/ORDER

June 13, 2008.

Petitioner filed, on November 16, 2007, an application for relief pursuant to 28 U.S.C. § 2255. Docket # 98. This petition was completed on a form that is no longer used by this district court. The current standard form contains instructions issued per the Third Circuit's guidance in *United States v. Thomas*, 221 F.3d 430, 437 n.6 (3d Cir. 2000). These instructions are provided to ensure that petitioners have adequate notice of the statutory limitations on and consequences of filing their applications, and thus "fairly have their one chance to obtain collateral relief." *Id.*

Accordingly, petitioner's application for relief pursuant to § 2255, as well as his "Motion for Production of Documents," docket # 100, will be held in abeyance for thirty days. The court will further request the Clerk of Court to provide petitioner with a copy of the current standard form for motions under 28 U.S.C. § 2255, as well as a copy of the application petitioner already filed in this action, docket # 98. Petitioner must read the instructions on the current standard form. If, after doing so, the petitioner wishes to

revise his application, he may, within thirty days of this order: either (1) resubmit his application on the current standard form, or (2) move this court for a continuance of up to ninety additional days to resubmit his application on the current standard form, or (3) move to withdraw his petition. If petitioner fails to file an appropriate motion within thirty days of this order, the court will begin consideration of the application for relief that petitioner filed on November 16, 2007, docket # 98.¹

In his initial filing, petitioner requested leave to proceed *in forma pauperis*. The current standard form for motions under § 2255 contains an accompanying page for requests to proceed *in forma pauperis*, which instructs petitioners that they must submit a certification of their prison assets that is signed by a prison official. Petitioner did not submit such a certification. Accordingly, the court will deny petitioner's request. The petitioner may again request leave to proceed *in forma pauperis* by resubmitting his petition for relief pursuant to § 2255 on the current standard form. The court notes that, because there is no filing fee for a petition for writ of habeas corpus pursuant to § 2255, the petitioner need not request leave to proceed *in forma pauperis* in order to proceed with his application. However, leave to proceed *in forma pauperis*, if granted, would entitle the petitioner to file a notice of appeal without charge if his § 2255 petition is later denied.

¹ The petitioner has filed a certificate suggesting that he may have already attempted to resubmit his application on the current standard form. *See* docket # 101. Despite its best efforts, the court has been unable to locate a resubmitted application. If petitioner has, indeed, filed such an application, the court asks that he again resubmit it.

ACCORDINGLY, it is hereby ORDERED that:

(1) Petitioner's request for leave to proceed *in forma pauperis* is DENIED, without prejudice to a second request through resubmission of an application for relief pursuant to § 2255 on the current standard form.

(2) Petitioner's application for relief pursuant to 28 U.S.C. § 2255, docket # 98, and "Motion for Production of Documents," docket # 100, will be held in abeyance for thirty days.

(3) The Clerk of Court shall provide petitioner with (a) a blank copy of the court's current standard form for motions under 28 U.S.C. § 2255, including the accompanying form for requesting leave to proceed *in forma pauperis*; and (b) a copy of the § 2255 application that petitioner has filed in this action, docket # 98.

(3) Petitioner should read the instructions accompanying the current standard form for motions under § 2255.

(4) Petitioner may, within thirty days of this order: either (a) resubmit his application for relief pursuant to § 2255 on the current standard form, or (b) move for a continuance of up to ninety additional days to resubmit his application for relief on the current standard form, or (c) move to withdraw his petition.

(5) If petitioner has not filed an appropriate motion with this court within thirty days of this order, the court will begin consideration of the application for relief that petitioner filed in this action on November 16, 2007, docket # 98.

BY THE COURT:

/s/ Louis H. Pollak

Pollak, J.