

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

UNITED STATES OF AMERICA

v.

DAVID J. OAKES

Criminal No. 00-76-P-C

Gene Carter, Senior District Judge

MEMORANDUM OF DECISION AND ORDER DENYING
DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT

Before the Court is Defendant's Motion for Relief From Judgment (Docket Item No. 64). The Court acts thereon, appeal being pending from the merits of this Court's action in denying Defendant's prior Motion to Vacate, Set Aside or Correct Sentence (Docket Item No. 23), *see* Memorandum of Decision and Order Denying § 2255 Motion (Docket Item No. 53), pursuant to the regimen of *Commonwealth of Puerto Rico v. SS Zoe Colocotroni*, 601 F.2d 39, 42 (1st Cir. 1979) ("The district court is directed to review any such motions expeditiously, within a few days of their filing, and quickly deny those which appear to be without merit, bearing in mind that any delay in ruling could delay the pending appeal.")

After full review of the written submissions on the within motion, it is hereby **ORDERED** that said motion be, and it is hereby, **DENIED**, the Court **FINDING** that the motion constitutes a second and successive petition for relief under 28 U.S.C. § 2255 as

amended by the Antiterrorism and Effective Death Penalty Act (AEDPA). *See Munoz v. United States*, 331 F.3d 151, 152 (1st Cir. 2003); *Rodwell v. Pepe*, 324 F.3d 66, 70 (1st Cir. 2003). The Court **FURTHER FINDS** that no certificate has been issued permitting the filing of such petition, *see* 28 U.S.C §§ 2255, 2244(b)(3)(B), and that the motion states no claims of merit for alleged ineffective assistance of counsel in his post-conviction proceedings. *See Pennsylvania v. Finley*, 481 U.S. 551, 107 S. Ct. 1990, 95 L. Ed. 2d 539 (1987).

The Court **NOTES** that it has previously denied Defendant's Motion for a Certificate of Appealability (Docket Item No. 61), finding that an appeal of this Court's denial of Defendant's prior Motion to Set Aside, Vacate or Correct Sentence would present on appeal "no substantial question . . . and that there is no probable cause for appeal." *See* endorsement on Docket Item No. 61 of April 4, 2003.

Gene Carter
Senior United States District Judge

Dated at Portland, Maine this 12th day of September, 2003.

[Counsel list follows.]

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Defendant(s)

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