

[DO NOT PUBLISH]

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 23-11915

Non-Argument Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

*versus*

JUSTIN LEWIS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 5:19-cr-00005-JA-PRL-1

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Before WILSON, JORDAN, and NEWSOM, Circuit Judges.

PER CURIAM:

Justin Lewis, proceeding *pro se*, appeals from the district court's May 17, 2023, order denying his motion to dismiss the indictment pursuant to the Double Jeopardy Clause of the Fifth Amendment. A jurisdictional question ("JQ") asked the parties to address the nature of our jurisdiction over this appeal. Rather than responding to the JQ, Lewis moved to stay it pending the resolution of his petition for a writ of certiorari in his earlier appeal. The Supreme Court has denied that petition, and we decline to stay our jurisdictional review. Upon review of the government's response to the JQ and the record, we DISMISS this appeal for lack of jurisdiction.

We have already held in appeal number 22-12624, Lewis's earlier appeal in this same criminal case, that Lewis's double jeopardy claim is not colorable because his prior conviction for wire fraud under 18 U.S.C. § 1343 does not bar his current prosecution under 18 U.S.C. § 2252A(a)(5)(B) for possession of child pornography. He is thus barred from relitigating that issue. *See United States v. Jordan*, 429 F.3d 1032, 1035 (11th Cir. 2005) ("The law of the case doctrine bars relitigation of issues that were decided, either explicitly or by necessary implication, in an earlier appeal of the same case."). Accordingly, the district court's May 17 order denying Lewis's motion to dismiss on double jeopardy grounds is not immediately appealable. *See Richardson v. United States*, 468 U.S. 317,

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322, 326 n.6 (1984) (“[W]e have indicated that the appealability of a double jeopardy claim depends upon its being at least ‘colorable’ . . . .”); *United States v. Bobo*, 419 F.3d 1264, 1267 (11th Cir. 2005).

All pending motions are DENIED as moot.