[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-16992
Non-Argument Calendar

D.C. Docket Nos. 8:14-cv-01399-VMC-TBM; 8:10-cr-00438-VMC-TBM-6

DAISY LOUISE THOMAS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(January 9, 2019)

Before WILLIAM PRYOR, GRANT and BLACK, Circuit Judges.

PER CURIAM:

Daisy Thomas, proceeding *pro se*, appeals the district court's denial of her motion for leave to amend her 28 U.S.C. § 2255 motion to vacate her convictions and sentences. Thomas first asserts the district court violated *Clisby v. Jones*, 960 F.2d 925 (11th Cir. 1992), by failing to consider all her ineffective-assistance claims when it denied her underlying § 2255 motion. Second, Thomas contends the district court erred in denying her motion to amend her § 2255 motion because her 18 U.S.C. § 924(c) conviction was predicated on conspiracy to commit Hobbs Act robbery, which is no longer a crime of violence after *Johnson v. United States*, 135 S. Ct. 2551 (2015). After *de novo* review, we determine we lack jurisdiction over the first issue, and conclude the district court lacked jurisdiction over the second issue. *See Williams v. Chatman*, 510 F.3d 1290, 1293 (11th Cir. 2007) (stating we review questions concerning jurisdiction *de novo*).

I. *Clisby*

We lack jurisdiction to consider an appeal of an order not specifically mentioned in the appellant's notice of appeal. *Seminole Tribe of Fla. v. Stranburg*, 799 F.3d 1324, 1343 (11th Cir. 2015). "[W]here some portions of a judgment and some orders are expressly made a part of the appeal, we must infer the appellant did not intend to appeal other unmentioned orders or judgments." *Id.* at 1343-44. A notice of appeal must designate the judgment or order appealed from. Fed. R. App. P. 3(c)(1)(B). Courts liberally construe the requirements of Rule 3, but that

does not excuse noncompliance with the rule, which is fatal to an appeal. *Smith v. Barry*, 502 U.S. 244, 248 (1992). We will not expand a notice of appeal to include judgments and orders not specified unless the overriding intent to appeal those orders was readily apparent on the face of the notice. *Osterneck v. E.T. Barwick Indus., Inc.*, 825 F.2d 1521, 1528 (11th Cir. 1987).

We lack jurisdiction to consider Thomas's claim the district court erred under *Clisby* when it denied her underlying § 2255 motion because she did not specify the order denying her initial § 2255 in her notice of appeal. Thomas specifically stated in her notice of appeal that she was appealing the district court's order denying her motion to file an amended § 2255 motion that included *Johnson* claims. Although Thomas cited the district court's order denying her motion for reconsideration of the denial of her motion to amend, her overriding intent was to appeal the denial of the motion to amend, as this Court implicitly determined in its orders granting Thomas leave to proceed *in forma pauperis* and denying the Government's motion to dismiss. However, there was no overriding intent to appeal the denial of her underlying § 2255 motion on the face of the notice of appeal because Thomas specifically noted her *Johnson* claims, which were not a part of her § 2255 motion. Thus, we lack jurisdiction to consider her *Clisby* claim because she did not specify the order denying her § 2255 motion in her notice of appeal and we must infer she did not intend to appeal the unmentioned order.

Alternatively, even if Thomas's notice of appeal could be construed to include the order denying her § 2255 motion, this Court also lacks jurisdiction to consider her *Clisby* claim because she would need a Certificate of Appealability to make a substantive argument about the denial of her § 2255 motion. 28 U.S.C. § 2253(c)(B).

II. *Johnson*

Before a federal prisoner can file a second or successive § 2255 motion, she must obtain an order from us authorizing the district court to consider the motion. 28 U.S.C. §§ 2244(b)(3)(A), 2255(h). Without our authorization, the district court is without jurisdiction to consider the § 2255 motion. *Id.* Prisoners cannot escape this gatekeeping function by relabeling their claim as something other than a § 2255 motion. *See Gilbert v. United States*, 640 F.3d 1293, 1323 (11th Cir. 2011) (en banc).

We *sua sponte* conclude the district court lacked jurisdiction to consider Thomas's motion to amend her § 2255 motion because it was actually an unauthorized successive § 2255 motion. *See Hubbard v. Campbell*, 379 F.3d 1245, 1246-47 (11th Cir. 2004) (affirming the district court's dismissal of an amended § 2254 petition that was filed six years after the denial of initial § 2254 petition as an unauthorized second or successive petition). Thomas's "motion to amend" could not have truly been a motion to amend under Federal Rule of Civil

Procedure 15 because it was filed after judgment was entered denying her § 2255 motion. *See Jacobs v. Tempur-Pedic Intern., Inc.*, 626 F.3d 1327, 1344-45 (11th Cir. 2010) (stating Rule 15 has no application after judgment is entered). Although the district court allowed Thomas to file a reply to the Government's response after it denied the § 2255 motion, the court noted it would only reopen the case if Thomas sufficiently rebutted the Government's arguments and the court's order. The court never reopened the case. Thomas's "motion to amend" was instead a successive § 2255 motion that sought to raise new claims under *Johnson*, and she needed to receive authorization from this Court before raising those claims before the district court, which she did not obtain. Because the motion to amend was actually an unauthorized successive § 2255 motion, the district court lacked jurisdiction to consider it. We vacate and remand to the district court with instructions to dismiss the motion to amend for lack of jurisdiction.

DISMISSED in part, VACATED AND REMANDED in part.