

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10984
Non-Argument Calendar

D.C. Docket Nos. 0:20-cv-60421-WPD; 0:99-cr-06064-WPD-1

ROBERT MARVIN HARRIS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

(August 5, 2020)

Before WILLIAM PRYOR, Chief Judge, WILSON and MARTIN, Circuit Judges.

PER CURIAM:

Robert Harris, proceeding *pro se*, appeals the district court's order dismissing his 28 U.S.C. § 2255 motion to vacate his sentence. The government has responded by filing a motion for summary affirmance and a motion to stay the

briefing schedule. In response, Harris filed a motion for summary disposition, construed as a motion for summary denial.

Summary disposition is appropriate either where time is of the essence, such as “situations where important public policy issues are involved or those where rights delayed are rights denied,” or where “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). An appeal is frivolous if it is “without arguable merit either in law or fact.” *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002).

A federal prisoner seeking to collaterally attack the validity of his federal sentence must seek relief under 28 U.S.C. § 2255. *See Sawyer v. Holder*, 326 F.3d 1363, 1365 (11th Cir. 2003). Section 2255 permits a prisoner to collaterally attack his conviction by filing a habeas petition on the ground that “the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.” 28 U.S.C. § 2255(a).

Under the provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), Pub. L. No. 104-132, 110 Stat. 1214 (1996), a prisoner is

generally entitled to file only one § 2255 motion. When a prisoner has previously filed a § 2255 motion, he must apply for and receive permission from the appellate court before filing a second or successive § 2255 motion. 28 U.S.C. § 2255(h). Absent the appellate court's permission, the district court lacks jurisdiction to address the motion, and it must be dismissed. *United States v. Holt*, 417 F.3d 1172, 1175 (11th Cir. 2005).

Here, there is no substantial question that Harris filed an unauthorized and successive 28 U.S.C. § 2255 motion to vacate. *See Groendyke Transp., Inc.*, 406 F.2d at 1162. Harris previously filed a § 2255 petition, challenging the same convictions, before filing the instant petition, and he failed to receive permission from our Court to file a second or successive petition. Therefore, the district court lacked jurisdiction to address the motion. *See Holt*, 417 F.3d at 1175.

Therefore, because there is no substantial question that the district court did not err in dismissing Harris's § 2255 motion as an unauthorized and successive motion, we GRANT the government's motion for summary affirmance. *See Groendyke Transp., Inc.*, 406 F.2d at 1162. Accordingly, we DENY the accompanying motion to stay the briefing schedule as moot. Moreover, because we grant the government's motion, we DENY Harris's construed motion for summary denial as moot.