

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13020

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL RAY ALFORD,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 5:16-cr-00028-RH-MAL-1

Before JILL PRYOR, BRANCH, and BLACK, Circuit Judges.

PER CURIAM:

Michael Alford, a federal prisoner proceeding *pro se*, appeals the district court's order denying her motion for an evidentiary hearing on issues raised in her previously denied 28 U.S.C. § 2255 motion. The Government moved for summary affirmance, arguing the district court did not have jurisdiction to consider the motion for an evidentiary hearing because Alford had already appealed the denial of her § 2255 motion to this Court, and there was nothing pending in the district court to which Alford could be entitled to an evidentiary hearing.

Summary disposition is appropriate 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).¹ An appeal is frivolous when the party is not entitled to relief because there is no basis in fact or law to support their position. *See Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001) (“A claim is frivolous if it is without arguable merit either in law or fact.”).

¹ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), this Court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to close of business on September 30, 1981.

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Summary affirmance is warranted because Alford's appeal is frivolous. *Groendyke Transp., Inc.*, 406 F.2d at 1162. The district court did not err in denying the motion because there were no issues pending for which the court could have granted an evidentiary hearing. *See Bilal*, 251 F.3d at 1349. Accordingly, because the appeal is frivolous, we GRANT the Government's motion for summary affirmance.

AFFIRMED.