In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-13703

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 JORDAN, BRASHER, and ABUDU, Circuit Judges.

BY THE COURT:

The government moves to dismiss this appeal from a post-judgment order in Michael Alford's 28 U.S.C. § 2255 proceedings on the grounds that we lack jurisdiction because a certificate of appealability ("COA") has not issued and the district court lacked jurisdiction to enter the order. The motion to dismiss is DENIED, and this appeal may proceed.

The lack of a COA is not grounds for dismissal because this appeal is not one that requires a COA. *See Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004) (providing that a COA is not required to appeal in a habeas proceeding except where a petitioner seeks to appeal from a "final order" under 28 U.S.C. § 2253(c)). The district court's order denying Alford's motion "to clarify and amplify" is not "final" under § 2253, because the court denied the motion on procedural grounds without engaging with the merits or substance of the motion. *See Jackson v. United States*, 875 F.3d 1089, 1090 (11th Cir. 2017) ("The key inquiry into whether an order is final for § 2253 purposes is whether it is an order that disposes of the merits in a habeas corpus proceeding." (quotation marks and alterations omitted)). We thus have appellate jurisdiction.

The government's remaining arguments concern only the district court's jurisdiction and thus are not a basis for dismissal of this appeal. *See Tamiami Partners, Ltd. ex rel. Tamiami Dev. Corp. v. Miccosukee Tribe of Indians of Fla.*, 177 F.3d 1212, 1221 (11th Cir. 1999) (providing that we have appellate jurisdiction to determine whether subject matter jurisdiction existed with the district court

in the first instance). To the extent that the government seeks summary affirmance, it has failed to put forth a sufficient argument to warrant appellate review. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681-82 (11th Cir. 2014) (providing that a party seeking to raise an issue on appeal must make more than "passing references" and "conclusory assertions"). Accordingly, the government's motion for summary affirmance is DENIED WITHOUT PREJUDICE.