

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-30753  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PATRICK CARLOS BRITTON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 00-CV-627-T  
No. 96-CR-49-2-T  
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May 16, 2001

Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:\*

Patrick Carlos Britton, federal prisoner # 24975-034, appeals the dismissal of his motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Britton also moves for appointment of appellate counsel. That motion is DENIED.

The district court dismissed the motion because it determined that it was a successive 28 U.S.C. § 2255 motion filed without this court's leave. Britton had previously filed a motion for a

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

sentence reduction in the district court on the ground of postconviction rehabilitation.

Britton's sentence-reduction motion was an unauthorized motion which the district court was without jurisdiction to entertain. See United States v. Early, 27 F.3d 140, 142 (5th Cir. 1994). Because Britton's sentence-reduction motion did not collaterally challenge his conviction or sentence, his present 28 U.S.C. § 2255 motion is not "successive" to it for purposes of 28 U.S.C. § 2244. See In re Cain, 137 F.3d 234, 235 (5th Cir. 1998).

The district court's order dismissing Britton's 28 U.S.C. § 2255 motion is VACATED, and this matter is REMANDED for further proceedings.