

November 8, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-10455
USDC No. 4:01-CV-18-A
USDC No. 4:96-CR-68-19-A
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STACEY WYNN,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas

Before DAVIS, SMITH and DENNIS, Circuit Judges.

PER CURIAM:*

Stacey Wynn, federal prisoner # 29140-077, was convicted of conspiracy to distribute cocaine and cocaine base and other related counts, and his conviction was affirmed on direct appeal. Wynn filed a 28 U.S.C. § 2255 motion that was dismissed in the district court as untimely. This court, in appeal No. 02-11274, granted Wynn a certificate of appealability on the issue of equitable tolling. While Wynn's appeal in No. 02-11274 was pending before this court, he filed a motion under 28 U.S.C.

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

§ 1361 in the district court seeking to compel the Government and its agents to produce a document that pertains to the merits of his 28 U.S.C. § 2255 motion. The district court denied Wynn's 28 U.S.C. § 1361 motion, and he now appeals that denial.

After Wynn's 28 U.S.C. § 1361 motion was denied, we affirmed the district court's dismissal of his 28 U.S.C. § 2255 motion as untimely. United States v. Wynn, No. 02-11274 (5th Cir. June 16, 2004). We also denied Wynn's request for rehearing in that case, and the deadline for filing a certiorari petition has now expired. Wynn's current appeal is thus moot. See United States v. Clark, 193 F.3d 845, 847-48 (5th Cir. 1999); Rocky v. King, 900 F.2d 864, 867 (5th Cir. 1990). Hence, we have no jurisdiction over this appeal. Lewis v. Continental Bank Corp., 494 U.S. 472, 477 (1990).

In lieu of filing an appellee's brief, the Government has filed a motion asking this court to dismiss this appeal or, alternatively, to summarily affirm the district court's judgment or grant an extension of time for filing an appellate brief.

IT IS ORDERED that the Government's motion to dismiss is GRANTED, this appeal is DISMISSED, and all other outstanding motions are DENIED AS MOOT.