

FILED

October 25, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-50353
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BYRON LAMONTE MCCUTCHEON,

Defendant-Appellant.

Appeal from the United States District Court for
the Western District of Texas
(USDC No. 6:05-CV-49)
(USDC No. 6:92-CR-26-5)

Before REAVLEY, HIGGINBOTHAM and CLEMENT, Circuit Judges.

PER CURIAM:*

Byron Lamonte McCutcheon seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2255 motion challenging his

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

conviction and sentence. Because the present 28 U.S.C. § 2255 motion is McCutcheon's fourth § 2255 motion, and McCutcheon failed to obtain permission from this Court to file a successive § 2255 motion, the district court was without jurisdiction to consider McCutcheon's § 2255 motion. *See* 28 U.S.C. §§ 2255 & 2244(b); *United States v. Key*, 205 F.3d 773, 774 (5th Cir. 2000). Accordingly, we deny the COA, vacate the judgment of the district court, and dismiss this appeal for lack of jurisdiction.

COA DENIED; JUDGMENT VACATED; APPEAL DISMISSED FOR
LACK OF JURISDICTION.