

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

April 10, 2014

Lyle W. Cayce
Clerk

No. 13-11082
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

DAVID EARL KATES,

Defendant–Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:13-CV-169

Before JOLLY, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

David Kates, federal prisoner # 30428-077, was convicted by a jury of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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possessing with the intent to distribute cocaine base and was sentenced to 360 months of imprisonment. *See United States v. Kates*, 174 F.3d 580, 581-84 (5th Cir. 1999). On February 8, 2012, in No. 2:12-CV-0018, the district court entered the following order:

DAVID EARL KATES is BARRED FROM FILING FURTHER ACTIONS, MOTIONS, OR PLEADINGS OF ANY KIND ON THE DISTRICT COURT LEVEL WITHOUT FIRST OBTAINING WRITTEN JUDICIAL PERMISSION. Any future pleadings in violation of this BAR will be stricken and will receive no ruling from the Court.

On September 10, 2013, Kates filed a “First Amendment Petition” seeking to overturn his conviction and sentence because the facts supporting his career-offender sentencing enhancement were not presented to the jury. On September 24, 2013, the district court, in accordance with the standing sanction, ordered that this pleading “is STRICKEN and will receive no ruling from the Court.” Kates has not shown that this was an abuse of discretion. *See Balawajder v. Scott*, 160 F.3d 1066, 1067-68 (5th Cir. 1998); *see also Gelabert v. Lynaugh*, 894 F.2d 746, 747-48 (5th Cir. 1990).

AFFIRMED.