

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

No. 18-11354

United States Court of Appeals
Fifth Circuit

FILED

September 3, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ELI TREVINO MUNGIA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:09-CV-97
USDC No. 5:95-CR-17-1

Before DENNIS, HAYNES, and DUNCAN, Circuit Judges.

PER CURIAM:*

Eli Trevino Mungia, federal prisoner # 26371-077, filed a Federal Rule of Civil Procedure 60(b)(4) motion filed in his criminal proceedings, in which he argued that the judgment denying his 28 U.S.C. § 2255 motion was void based upon the ineffective assistance of his federal habeas counsel. The district court denied his Rule 60(b) motion and denied him a certificate 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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appealability (COA). Mungia moves for a COA and for leave to proceed in forma pauperis (IFP) on appeal.

To the extent that Mungia challenges the district court's denial of his Rule 60(b) motion in the context of his criminal proceedings, he is appealing from a "meaningless, unauthorized" motion that the district court lacked jurisdiction to consider. *United States v. Early*, 27 F.3d 140, 141-42 (5th Cir. 1994). Because an appeal on this ground lacks arguable merit, it is DISMISSED, see 5TH CIR. R. 42.2, and a COA is DENIED as unnecessary, see 28 U.S.C. § 2253(c)(1)(B).

To the extent that the district court's denial of a COA implicates Mungia's prior civil postconviction proceedings and Mungia seeks a COA to appeal the district court's denial of his Rule 60(b) motion in that context, he has not made the requisite showing for a COA. See *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); see also *Gonzalez v. Crosby*, 545 U.S. 524, 531-32 & n.5 (2005); 28 U.S.C. § 2244(b)(1). Accordingly, a COA is DENIED. Mungia's motion for leave to proceed IFP on appeal is also DENIED.

Mungia has previously been warned that frivolous, repetitive, or otherwise abusive filings would invite the imposition of sanctions. See *United States v. Mungia*, No. 18-10004 (5th Cir. Dec. 10, 2018) (unpublished); *In re Mungia*, No. 16-10307 (5th Cir. June 21, 2016) (unpublished). Mungia is again WARNED that the continued filing of frivolous, repetitive, or otherwise abusive attempts to challenge his convictions and sentences in this court or any court subject to this court's jurisdiction will invite the imposition of sanctions, including dismissal, monetary sanctions, and possibly denial of access to the judicial system.