

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

United States Court of Appeals
Fifth Circuit

FILED

April 2, 2020

Lyle W. Cayce
Clerk

No. 19-40928

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FRANK EDWIN PATE,

Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:14-CR-125-1

Before HAYNES, GRAVES, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Frank Edwin Pate was convicted by jury verdict of two counts of wire fraud and one count of mail fraud. In an amended judgment issued in May 2016, the district court sentenced Pate to a total term of 168 months of imprisonment, three years of supervised release, and \$2,829,586.84 restitution. In June 2017, we granted the Government's motion to dismiss Pate's direct appeal from that judgment.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 19-40928

Over three years after entry of that amended judgment, Pate filed a second notice of appeal challenging that same judgment. He now moves this court for the appointment of counsel. We may dismiss an appeal when considering an interlocutory motion if the appeal “is frivolous and entirely without merit.” 5TH CIR. R. 42.2. Pate is not entitled to two appeals, so his second appeal from the same conviction is “not properly before this Court.” *United States v. Arlt*, 567 F.2d 1295, 1296-97 (5th Cir. 1978); *accord United States v. Rodriguez*, 821 F.3d 632, 633-34 (5th Cir. 2016). A defendant is entitled to the appointment of counsel only for his first direct appeal. *See Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987).

Pate’s motion for appointment of counsel is DENIED, and the appeal is DISMISSED as frivolous. *See* 5TH CIR. R. 42.2.