

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60605
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

MICHAEL HABINIAK,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CA-C-93-413(88-CR-313-1))

(January 26, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:*

Michael Habiniak appeals the dismissal of his federal prisoner's 28 U.S.C. § 2255 motion for collateral relief. We dismiss the appeal as frivolous and impose sanctions.

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Habiniak has filed yet another § 2255 motion challenging his March 29, 1989, conviction for possession and conspiracy to possess marihuana with intent to distribute while on board a vessel of the United States. His conviction was affirmed on direct appeal, see United States v. Habiniak, No. 89-2362 (5th Cir. Nov. 22, 1989) (unpublished), and this court affirmed the denial of his previous § 2255 motions, see United States v. Habiniak, Nos. 92-7154, 92-7661 (5th Cir. Aug. 30, 1993) (unpublished), and United States v. Habiniak, Nos. 93-2157, 93-2368 (5th Cir. Aug. 30, 1993) (unpublished).

In his current motion, Habiniak challenges the subject matter jurisdiction of the district court that convicted him, arguing that because the offense occurred within the admiralty jurisdiction of the United States, the court did not have jurisdiction. The government filed a motion to dismiss Habiniak's successive motion for abuse of the writ. The district court issued a rule 9(b)¹ form to Habiniak, noting that this was a new ground for relief not raised in his first § 2255 motion. Habiniak responded that a court's jurisdiction could be challenged at any time. He also filed an addendum in which he argued that the district court also did not have jurisdiction because the crime occurred in the Corpus Christi Division, and he was indicted in the Brownsville Division.

The district court found that Habiniak failed to show cause

¹ Rules Governing Proceedings in the United States District Courts under Section 2255 of Title 28, United States Code, rule 9(b), successive motions.

for failing to raise these issues in his previous motion; held that even a subject matter jurisdiction argument was subject to dismissal under rule 9(b); held that failure to consider these claims would not result in a fundamental miscarriage of justice because Habiniak had not alleged that he was innocent; and denied his § 2255 motion. The court also found that Habiniak's motion was "intolerably abusive" and awarded the government costs as a sanction. Costs were not ordered, however, as the government did not submit the necessary bill of costs.

II.

Habiniak briefs the merits of his admiralty jurisdiction argument only. He does not address the basis of the district court's dismissal of his motion for abuse of § 2255 procedures under rule 9(b).

If an appellant does not identify any error in the district court's analysis or application to the facts of the case, it is the same as if he had not appealed the judgment at all. Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987). Habiniak does not challenge the district court's finding that he did not show cause or a fundamental miscarriage of justice. Thus, there is no issue for us to review on appeal.

III.

We have warned Habiniak against filing further frivolous appeals. We stated that if Habiniak filed additional frivolous

appeals, he would be sanctioned pursuant to FED. R. APP. P. 38. Accordingly, we impose a sanction of \$100. Further infractions can result in additional sanctions, including our prohibiting Habiniak from filing any future appeals whatsoever.

The appeal is DISMISSED as frivolous. See 5TH CIR. R. 42.2.