

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 98-30456  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALEX HAMILTON, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
USDC No. 94-CR-89-1  
- - - - -

March 30, 1999

Before JOLLY, SMITH, and WIENER, Circuit Judges.

PER CURIAM:\*

Alex Hamilton, Jr., federal prisoner # 02598-095, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 in the Western District of Texas. The district court for the Western District of Texas correctly construed this § 2241 motion as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 and transferred the cause to the Middle District of Louisiana. Cox v. Warden, Fed. Detention Ctr., 911 F.2d 1111,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

1113 (5th Cir. 1990). The district court addressed Hamilton's § 2255 motion on the merits.

Hamilton concedes and the record shows that he filed a prior § 2255 motion. Rather than addressing the merits of the claims, the district court should have dismissed Hamilton's motion for failing to obtain this court's permission pursuant to §§ 2244(b) and 2255 to file the motion. The district court is forbidden to consider Hamilton's successive § 2255 motion which was filed without this court's permission. See §§ 2244(b)(3)(A), 2255; see In re Gassery, 116 F.3d 1051, 1051 (5th Cir. 1997). Accordingly, we AFFIRM the dismissal of Hamilton's successive § 2255 motion on this basis.

Hamilton has filed a motion for release pending appeal, a supplemental memorandum in support of that motion, and an omnibus motion which essentially reargues the merits of his arguments on appeal. All of these motions are DENIED.

AFFIRMED; MOTIONS DENIED.