

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

No. 18-10680

United States Court of Appeals
Fifth Circuit

FILED

October 16, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

JOE ARZOLA RAMIREZ,

Defendant–Appellant.

Appeal from the United States District Court
for the Northern District of Texas
No. 6:06-CR-25-1

Before SMITH, HIGGINSON, and DUNCAN, Circuit Judges.

PER CURIAM:*

For the second time, Joe Ramirez, federal prisoner #35876-177, appeals his 2007 sentence for possession with intent to distribute 50 grams or more 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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methamphetamine. *See United States v. Ramirez*, 274 F. App'x 407, 407 (5th Cir. 2008) (per curiam) (dismissing Ramirez's first appeal per *Anders v. California*, 386 U.S. 738 (1967)). Ramirez has also filed a motion to proceed *pro se*. Although Ramirez's instant notice of appeal is untimely, *see* FED. R. APP. P. 4(b)(1)(A), we pretermitt the timeliness issue because we conclude that the appeal is frivolous, *see United States v. Martinez*, 496 F.3d 387, 388 (5th Cir. 2007) (per curiam); 5TH CIR. R. 42.2.

Because “[a] criminal defendant is not entitled to two appeals,” *United States v. Rodriguez*, 821 F.3d 632, 633 (5th Cir. 2016), Ramirez's second appeal of his sentence “is not properly before this Court,” *United States v. Arlt*, 567 F.2d 1295, 1297 (5th Cir. 1978) (per curiam). Even construing Ramirez's notice of appeal as a request for authorization to file a successive 28 U.S.C. § 2255 motion based on *Mathis v. United States*, 136 S. Ct. 2243 (2016), and *United States v. Hinkle*, 832 F.3d 569 (5th Cir. 2017), *cert. denied*, 138 S. Ct. 1453 (2018), it is wholly meritless because neither *Mathis* nor *Hinkle* provides a basis for granting successive authorization, *see In re Lott*, 838 F.3d 522, 522–23 (5th Cir. 2016) (per curiam); *In re Sparks*, 657 F.3d 258, 260 (5th Cir. 2011) (per curiam).

Accordingly, the appeal is DISMISSED as frivolous. *See* 5TH CIR. R. 42.2. Ramirez's motion to proceed *pro se* is DENIED as moot.