

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

November 16, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAMINION T. TITTIES,

Defendant - Appellant.

No. 21-6107
(D.C. Nos. 5:15-CR-00018-R-1 &
5:19-CV-00592-R)
(W.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY

Before **BACHARACH, EID, and CARSON**, Circuit Judges.

Daminion T. Titties, proceeding pro se, seeks a certificate of appealability (COA) to appeal the district court’s dismissal of his “Motion for Modification or Reduction of Sentence Under 18 U.S.C. § 3582(b)(3)” as an unauthorized second or successive 28 U.S.C. § 2255 motion. We deny a COA.

I. Background

Mr. Titties pled guilty to being a felon in possession of a firearm. He was originally sentenced to 188 months in prison because his sentence was enhanced under the Armed Career Criminal Act (ACCA), but we reversed and remanded for him to be resentenced without the ACCA enhancement. He was resentenced to 120 months in prison. We dismissed his appeal challenging his 120-month sentence after granting the government’s motion to enforce the appeal waiver in his plea agreement. He later filed a

§ 2255 motion, raising a claim of ineffective assistance of counsel related to his guilty plea and a claim of sentencing error based on the application of U.S. Sentencing Guidelines Manual (USSG) § 2K2.1(b)(6)(B) (U.S. Sent’g Comm’n 2016). The district court denied the motion as untimely and Mr. Titties did not appeal.

He subsequently filed a “Motion for Modification or Reduction of Sentence Under 18 U.S.C. § 3582(b)(3).” In the motion, he again argued that the district court erred in applying USSG § 2K2.1(b)(6)(B) to enhance his sentence. He requested that the enhancement be removed and that his sentence be reduced. In its order, the district court explained that § 3582(b)(3) addresses the finality of a conviction and does not provide a basis for modification of a sentence. The district court further explained that § 2255 was the exclusive remedy for a federal prisoner to challenge his sentence and that Mr. Titties’s § 3582(b)(3) motion seeking relief from his sentence should be treated as a § 2255 motion. Because he had not received authorization to file a second or successive § 2255 motion, the district court dismissed the motion for lack of jurisdiction. Mr. Titties now appeals from that dismissal.

II. Discussion

To appeal the district court’s dismissal of his § 3582(b) motion as an unauthorized second or successive § 2255 motion, Mr. Titties must obtain a COA. *See United States v. Harper*, 545 F.3d 1230, 1233 (10th Cir. 2008). To obtain a COA where, as here, a district court has dismissed a filing on procedural grounds, the movant must show both “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable

whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). We need not address the constitutional question if we conclude that reasonable jurists would not debate the district court’s resolution of the procedural one. *Id.* at 485.

A prisoner may not file a second or successive § 2255 motion unless he first obtains an order from the circuit court authorizing the district court to consider the motion. 28 U.S.C. § 2255(h); *id.* § 2244(b)(3)(A). Absent such authorization, a district court lacks jurisdiction to address the merits of a second or successive § 2255 motion. *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) (per curiam).

In his COA application, Mr. Titties does not explain how the district court erred in treating his § 3582(b)(3) motion as an unauthorized second or successive § 2255 motion and dismissing it for lack of jurisdiction. Instead, he simply reasserts his argument that his sentence was improperly enhanced under USSG § 2K2.1. Mr. Titties has failed to show that reasonable jurists would debate the correctness of the district court’s procedural ruling.

III. Conclusion

For the foregoing reasons, we deny a COA and dismiss this matter. We grant Mr. Titties’s motion for leave to proceed on appeal without prepayment of costs or fees.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk