

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

**June 16, 2023**

**Christopher M. Wolpert**  
**Clerk of Court**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RAYMOND L. ROGERS,

Defendant - Appellant.

No. 22-3199  
(D.C. No. 6:10-CR-10186-JWB-1)  
(D. Kan.)

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**ORDER AND JUDGMENT\***

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Before **BACHARACH, KELLY, and MORITZ**, Circuit Judges.\*\*

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In December 2011, Defendant-Appellant Raymond L. Rogers, an inmate appearing pro se, was convicted by a jury of bank robbery, 18 U.S.C. § 2113(a), brandishing a firearm during and in relation to the robbery, 18 U.S.C. § 924(c)(1)(A), and being a felon in possession of a firearm, 18 U.S.C. § 922(g)(1). 1 R. 60. He was sentenced to 234 months' imprisonment. *Id.* 61. On direct appeal, his convictions and sentence were affirmed. *United States v. Rogers*, 520 F. App'x 727 (10th Cir.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

\*\* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

2013). The mandate issued on April 29, 2013. 1 R. 108. On December 9, 2021, Mr. Rogers moved this court to recall or modify the mandate on the grounds that his counsel failed to inform him of his right to file a petition for certiorari with the Supreme Court. This court denied the motion. United States v. Rogers, No. 12-3125, 2021 WL 7500324 (10th Cir. Dec. 15, 2021) (summary order). He then filed a petition for writ of certiorari of the denial of the motion to recall on January 3, 2022 (No. 21-7366), which was denied on April 18, 2022. Rogers v. United States, 142 S. Ct. 1701 (2022). In addition, Mr. Rogers has filed numerous unsuccessful post-conviction motions and original proceedings seeking mandamus.

In August 2022, Mr. Rogers asked the district court to recall or modify the mandate in the direct appeal based on substantially similar grounds, 3 R. 33–37, and also sought appointment of counsel to assist with a certiorari petition, id. 39–42. The district court denied both motions, finding it lacked jurisdiction to recall the mandate and that there was no basis for appointment of counsel. United States v. Rogers, No. 10-1086-01, 2022 WL 4447426 (D. Kan. Sept. 23, 2022).

The district court was unassailably correct. The district court did not have the authority to recall the prior Tenth Circuit mandate. See Wilkins v. United States, 441 U.S. 468, 469 (1979) (per curiam); Harte v. Bd. of Cmm’rs, 940 F.3d 498, 510 (10th Cir. 2019). Moreover, this court rejected that request in the direct criminal appeal (No. 12-3125). The request for appointment of counsel to pursue a petition for writ of certiorari is moot in light of the above. See United States v. Reynoso, No. 22-2119, 2023 WL 3017136, at \*3–4 (10th Cir. Apr. 20, 2023).

AFFIRMED. The motion for leave to proceed on appeal without prepayment of costs or fees is DENIED.

Entered for the Court

Paul J. Kelly, Jr.  
Circuit Judge