

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5158

September Term, 2003

04cv00573

Filed On: October 29, 2004 [856902]

Robert Dale Davidson,
Appellant

v.

Harley G. Lappin, Director, Federal Bureau of Prisons
and United States of America,
Appellees

BEFORE: Sentelle, Rogers, and Garland, Circuit Judges

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia, and on the brief and the “rebuttal” to the district court opinion filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court’s order filed April 9, 2004, be affirmed. The district court correctly determined that appellant’s application for a writ of habeas corpus filed under 28 U.S.C. § 2241 constitutes an attack on the validity of his conviction and sentence, which should be presented to the sentencing court—here, the United States District Court for the District of Oregon—by a motion under 28 U.S.C. § 2255. See Charles v. Chandler, 180 F.3d 753, 755-56 (6th Cir.1999) (per curiam). Appellant has not demonstrated that his remedy under § 2255 would be “inadequate or ineffective.” 28 U.S.C. § 2255. The § 2255 remedy is not inadequate or ineffective simply because § 2255 relief has already been denied, or because the petitioner has been denied permission to file a second or successive § 2255 motion, or because the petitioner is procedurally barred from pursuing relief under § 2255. See Charles, 180 F.3d at 756 (collecting cases).

To the extent appellant is challenging his conviction or sentence via an independent action alleging fraud on the court under Fed. R. Civ. P. 60(b), the claim fails. Appellant may not seek relief from a criminal sentence under Fed. R. Civ. P. 60(b), because Rule 60(b) is not applicable to criminal proceedings. See Fed. R. Civ. P. 1; United States v. Mosavi, 138 F.3d 1365, 1366 (11th Cir. 1998) (per curiam).

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Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam