United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-3036 **September Term, 2019**

1:10-cr-00178-CRC-1

Filed On: March 16, 2020

United States of America,

Appellee

v.

Caleb Gray-Burriss,

Appellant

BEFORE: Tatel, Millett, and Pillard, 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 briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing and appellant's motions to appoint counsel and to appoint a forensic accountant, it is

ORDERED that the motions to appoint counsel be denied. The interests of justice do not warrant appointment of counsel in this case. See 18 U.S.C. § 3006A(a)(2)(B). It is

FURTHER ORDERED AND ADJUDGED that the district court's order filed April 15, 2019, be affirmed. In analogous contexts, this court has reviewed for abuse of discretion the district court's denial of motions for evidentiary hearings. See U.S. v. Lam Kwong-Wah, 924 F.2d 298, 308 (D.C. Cir. 1991) (reviewing the denial of a hearing on a motion for a new trial); U.S. v. Morrison, 98 F.3d 619, 625-26 (D.C. Cir. 1996) (reviewing the denial of a hearing on a motion for relief under 28 U.S.C. § 2255). In recognition of this discretion, this court has stated that the district court need not hold an evidentiary hearing unless the movant has offered substantial evidence suggesting his or her right to the underlying relief. See U.S. v. Toms, 396 F.3d 427, 437 (D.C. Cir. 2005) (affirming the denial of a hearing absent substantial evidence in support of a § 2255 motion); U.S. v. West, 392 F.3d 450, 457 n.4 (D.C. Cir. 2004) (applying the same standard on a motion to withdraw a plea). Here, appellant argues that he is entitled to resentencing in light of documents that, according to appellant, show that the district

court should have ordered him to pay a lower amount in restitution. However, appellant has forfeited such arguments, as he failed to raise them in his earlier appeals. See Laffey v. Northwest Airlines, Inc., 740 F.2d 1071, 1089 (D.C. Cir. 1984). Appellant also appears to argue that to the extent he failed to preserve these arguments, that forfeiture should be excused as a product of ineffective assistance by his appellate counsel. However, this court does not recognize assertions of ineffective assistance of appellate counsel on subsequent appeals. U.S. v. Henry, 472 F.3d 910, 915 (D.C. Cir. 2007) ("[A] defendant with such a claim must pursue it on collateral review pursuant to 28 U.S.C. § 2255."); see also Chaidez v. United States, 568 U.S. 342, 345 n.1 (2013) (stating that an individual who has completed his or her prison sentence may seek collateral review via a petition for a writ of coram nobis). Finally, because this appeal can be affirmed on the merits, and the filing requirement under Federal Rule of Appellate Procedure 4(b) is a non-jurisdictional, claim-processing rule, the court declines to reach the questions regarding the timeliness of this appeal. See United States v. Hunter, 786 F.3d 1006, 1008 (D.C. Cir. 2015). It is

FURTHER ORDERED that the motion to appoint a forensic accountant be dismissed as moot.

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