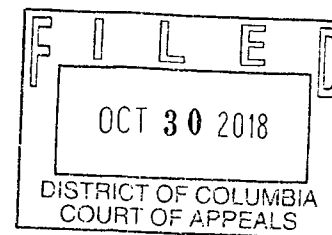


**District of Columbia  
Court of Appeals**



No. 18-CO-371

HENRY L. WALLACE,  
Appellant,

v.

2000 FEL 4698

UNITED STATES,  
Appellee.

BEFORE: Glickman and Thompson, Associate Judges, and Farrell, Senior Judge.

**J U D G M E N T**

On consideration of this court's July 24, 2018, order that held in abeyance appellant's "Motion to Direct My Appeal Brief to Invoke the District of Columbia Equivocal Statutory Codes that Match the U.S. Federal Codes," appellee's motion for summary affirmance, appellant's brief, and the record on appeal, it is

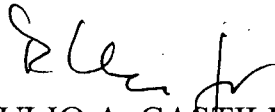
ORDERED that appellee's motion for summary affirmance is granted. *See Watson v. United States*, 73 A.3d 130 (D.C. 2013); *Oliver T. Carr Mgmt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979). The trial court did not abuse its discretion by denying appellant's most recent post-conviction motion as procedurally barred. *See Alston v. United States*, 838 A.2d 320, 324 (D.C. 2003) (stating this court reviews the denial of a motion for collateral relief without a hearing only for an abuse of discretion). To the extent appellant presented a different argument in his second § 23-110 motion, it is procedurally barred for failure to raise it in his direct appeal or first § 23-110 motion. *See Washington v. United States*, 834 A.2d 899, 902 (D.C. 2003); *Head v. United States*, 489 A.2d 450, 451 (D.C. 1985). Lastly, the trial court did not abuse its discretion by denying appellant's § 23-110 motion on the merits because, contrary to appellant's argument, the record shows appellant was not convicted or sentenced based on aggravating factors. It is

**No. 18-CO-371**

FURTHER ORDERED that appellant's "Motion to Direct My Appeal Brief to Invoke the District of Columbia Equivocal Statutory Codes that Match the U.S. Federal Codes," is denied as moot. It is

FURTHER ORDERED and ADJUDGED that the order on appeal be, and hereby is, affirmed.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO  
Clerk of the Court

Copies mailed to:

Honorable Lynn Leibovitz

Director, Criminal Division  
Case Management Branch

Henry L. Wallace  
USP Coleman I  
FR #31038-007  
P.O. Box 1033  
Coleman, FL 33521

Copy e-served to:

Elizabeth Trosman, Esquire  
Assistant United States Attorney

cml

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION—FELONY BRANCH**

**UNITED STATES**

v.

**HENRY WALLACE**

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: **Case No: 2000 FEL 4698**

:

:

:

: **Judge Lynn Leibovitz**

:

**ORDER**

Before the court is defendant's *pro se* Brief of Law for D.C. Code § 23-110 Motion, filed March 6, 2018. For the following reasons, the court will deny defendant's motion.

**PROCEDURAL HISTORY**

Defendant Henry Wallace was convicted by a jury of first degree murder while armed, assault with intent to kill while armed, two counts of possession of a firearm during commission of a crime of violence or dangerous offense, carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition on May 15, 2002. The Honorable Robert I. Richter sentenced defendant to concurrent terms totaling to a sentence of 30 years to life incarceration.<sup>1</sup> The convictions were affirmed by the District of Columbia Court of Appeals on July 14, 2005. *Wallace v. United States*, 879 A.2d 694 (D.C. 2005).

On October 29, 2014, the defendant filed a *pro se* Motion to Set Aside, Vacate, or Correct Sentence and Judgment Pursuant to D.C. Code § 23-110. On July 17, 2015, the defendant filed another *pro se* Motion to Set Aside, Vacate, or Correct Sentence and Judgment Pursuant to D.C. Code § 23-110, which Judge Leibovitz denied on July 31, 2015; this motion was an identical copy of the motion filed on October 29, 2014. On August 26, 2015, defendant filed a *pro se* Motion to Rescind Court Order, arguing that his filing of an identical motion was

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<sup>1</sup> The Honorable Robert I. Richter took senior status December 1, 2014. Judge Leibovitz has been assigned to handle all of Judge Richter's post-conviction motions or requests filed after that date.

an error and requesting an attorney to assist with his claim. This motion was denied by Judge Leibovitz on September 1, 2015. On September 30, 2016, defendant filed a letter which the court treated as a *pro se* Motion to Reconsider, which was denied on October 7, 2016.

In the instant motion, defendant claims that the government lacked jurisdiction to charge him in Count One of his indictment, which charged First Degree Murder While Armed (Premeditated), with aggravating circumstances. Defendant further argues that this “corrupted” the legal process. In addition, the defendant argues that although the instant motion is not his first § 23-110 motion, his current claims are ones not previously presented in any motion and claims that are not procedurally barred. The defendant’s claims are without merit.

### ANALYSIS

A prisoner in custody under sentence of the Superior Court may move the court to vacate his sentence if it was imposed in violation of the United States Constitution or the laws of the District of Columbia. *See* D.C. Code § 23-110(a). Under D.C. Code § 23-110(c), “the court ‘shall’ grant a hearing ‘[u]nless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief.’” *Bellinger v. United States*, 127 A.3d 505 (D.C. 2015). The court may deny the motion without a hearing only if the claims are 1) palpably incredible, 2) vague and conclusory, or 3) do not entitle the movant to relief even if true. The court may conclude that no evidentiary hearing is necessary only “if no genuine doubt exists about the facts that are material to motion.” *Id.* at 515.

The “abuse of writ” doctrine applies when a defendant raises a claim in a second or subsequent collateral attack motion that he did not raise in an earlier collateral attack motion. *Thomas v. United States*, 772 A.2d 818, 824 (D.C. 2001). The “abuse of writ” doctrine precludes consideration of “claims not raised, and thus defaulted, in the first collateral

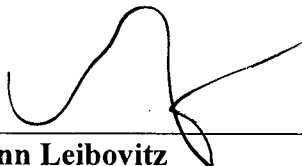
proceeding.” *Id.*, at 824. A court may consider a claim defaulted under the “abuse of writ” doctrine only if the defendant establishes “cause and prejudice” for his failure to raise his current claim in his earlier collateral attack motion. *Matos v. United States*, 631 A.2d 28, 30 (D.C. 1993).

Defendant claims that the government lacked jurisdiction to charge him in Count One because the aggravating circumstances alleged consisted of a prior conviction in Maryland. This fact did not deprive the government of jurisdiction, and the jurisdiction claim does not establish a basis to skirt the abuse of writ doctrine.

Even on the merits, defendant’s claim does not warrant relief. Although charged in the indictment with aggravating circumstances, the jury was never asked to consider the aggravating circumstances alleged as to Count One. Nor was defendant sentenced for aggravating circumstances. Judge Richter sentenced defendant to the mandatory minimum term of 30 years to life for First Degree Murder, on Count One. For these reasons, the aggravating circumstances alleged in Count One had no impact on defendant’s conviction, and his sentence was lawful.

Therefore it is this 27<sup>th</sup> day of **March 2018**, hereby

**ORDERED** that defendant’s *pro se* Brief of Law for D.C. Code § 23-110 Motion is **DENIED**.

  
\_\_\_\_\_  
**Lynn Leibovitz**  
**Associate Judge**  
(Signed in chambers)

**Additional material  
from this filing is  
available in the  
Clerk's Office.**