IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-30306
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
November 21, 2018
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GARLAND D. MILLER,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:07-CR-50032-1

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Garland D. Miller, former federal prisoner # 13658-035, appeals the district court's denial of his Federal Rule of Criminal Procedure Rule 35(a) motion. Miller filed the motion to challenge the restitution order resulting from his 2008 convictions for tax evasion. Miller has also filed a separate motion requesting this court to overturn or correct his restitution order.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The district court did not have the authority to consider Miller's Rule 35(a) motion, because the motion was untimely and the time limit contained in Rule 35 is jurisdictional. *See* FED. R. CRIM. P. 35(a) (2008); *United States v. Lopez*, 26 F.3d 512, 518-21 (5th Cir. 1994). To the extent that Miller seeks relief pursuant to a petition for writ of error coram nobis, we and the district court have previously denied Miller relief based on the same grounds he raises in the instant proceeding. *See United States v. Miller*, 705 F. App'x 325, 325-26 (5th Cir. 2017). To the extent that Miller seeks relief pursuant to Federal Rule of Civil Procedure 60(b), such a motion does not apply in criminal proceedings. *See* FED. R. CIV. P. 1 ("These rules govern the procedure in all civil actions . . . ."). Accordingly, the judgment of the district court is AFFIRMED. For the same reasons, Miller's motion to overturn or correct his restitution order is DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-30306

2/6/19

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

GARLAND D. MILLER,

Defendant - Appellant

Appeal from the United States District Court
for the Western District of Louisiana

ON PETITION FOR REHEARING EN BANC

(Opinion 11/21/18, 5 Cir., _____, _____ F.3d _____)

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:

(✓) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court

having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

UNITED STATES OF AMERICA	CRIMINAL ACTION NO. 07-50032
VERSUS	JUDGE S. MAURICE HICKS, JR.
GARLAND D. MILLER	MAGISTRATE JUDGE HORNSBY

ORDER

The Court having considered Petitioner, Garland D. Miller's ("Miller") Petition for Writ of Error Coram Nobis or in the Alternative Motion to Amend Judgment Pursuant to Fed. R. Civ. P. 60 (Record Document 200);

IT IS ORDERED that Miller's Petition for Writ of Error Coram Nobis or in the Alternative Motion to Amend Judgment Pursuant to Fed. R. Civ. P. 60 (Record Document 200) be and is hereby **DENIED**. The Court has previously issued a Memorandum Ruling and Order addressing Miller's arguments and denying this request. See Record Documents 192 and 193.

THUS DONE AND SIGNED at Shreveport, Louisiana, on this the 22nd day of February, 2018.

S. MAURICE HICKS, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT

ADDENDUM C