

APPENDIX 2a

For Writ of Certiorari

Fourth Circuit Order in USCA No. 19-7625 dated May 26, 2020, denying Pernell's Motion for Rehearing and Rehearing En Banc.

FILED: May 26, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7625
(3:09-cr-00452-REP-DJN)
(3:15-cv-00723-REP-DJN)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ROBERT L. PERNELL, JR.

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc and motion to stay the mandate. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc or motion to stay the mandate.

Entered at the direction of the panel: Judge Wilkinson, Judge Wynn and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX 3a

For Writ of Certiorari

Fourth Circuit Order in USCA No. 19-7625 dated March 10, 2020, denying Pernell's Motion for Certificate of Appealability.

UNPUBLISHED

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

No. 19-7625

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT L. PERNELL, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, Senior District Judge. (3:09-cr-00452-REP-DJN; 3:15-cv-00723-REP-DJN)

Submitted: March 5, 2020

Decided: March 10, 2020

Before WILKINSON and WYNN, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Robert L. Pernell, Jr., Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert L. Pernell, Jr., appeals the district court's order denying his post-judgment motions in his criminal case. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *See United States v. Pernell*, No. 3:09-cr-00452-REP-DJN (E.D. Va. Oct. 11, 2019). We grant Pernell's motion to exceed length limitations for his informal brief and deny a certificate of appealability as unnecessary. *See* 28 U.S.C. § 2253(c)(1)(B) (2018); *Harbison v. Bell*, 556 U.S. 180, 183 (2009). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: March 10, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7625
(3:09-cr-00452-REP-DJN)
(3:15-cv-00723-REP-DJN)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ROBERT L. PERNELL, JR.

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

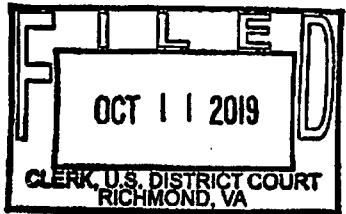
This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX 4a

For Writ of Certiorari

Judgement in Criminal Case No. 3:09-cr-00452-REP-DJN-1 dated October 11, 2019,
denying Pernell's Motion to Reinstate a Direct Appeal.



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA

v.

Criminal No. 3:09CR452

ROBERT LEE PERNELL

MEMORANDUM ORDER

Robert Lee Pernell, a federal inmate proceeding pro se, filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence ("§ 2255 Motion," ECF No. 152). By Memorandum Opinion and Order entered November 17, 2016, the Court denied Pernell's § 2255 Motion as barred by the relevant statute of limitations. United States v. Pernell, No. 3:09CR452, 2016 WL 6821089, at *1, *5 (E.D. Va. Nov. 17, 2016).

Pernell has now filed a MOTION FOR REINSTATEMENT OF DIRECT APPEAL (ECF No. 196), a MOTION TO EXERCISE INHERENT EQUITABLE POWERS TO GRANT SUBJECT MATTER JURISDICTION (ECF No. 197), and a MOTION FOR EVIDENTIARY HEARING (ECF No. 198). In these motions, Pernell contends that "his new proposed § 2255 motion, at issue here, to reinstate direct appeal should not be misconstrued or considered a second or successive § 2255 under Section § 2255(h), as 'it seeks to reinstate his direct-appeal rights, and therefore does not challenge the legality of the sentence imposed.'" (ECF No. 197, at 3 (spacing corrected) (citation omitted).) Pernell fails to identify a procedural vehicle that would allow this Court

to provide him the relief he seeks, that is, to reopen his appeal. Thus, the MOTION FOR REINSTATEMENT OF DIRECT APPEAL (ECF No. 196) and MOTION TO EXERCISE INHERENT EQUITABLE POWERS TO GRANT SUBJECT MATTER JURISDICTION (ECF No. 197) are denied. Moreover, the Court fails to discern on what ground an evidentiary hearing would be warranted in this closed action. Accordingly, the MOTION FOR EVIDENTIARY HEARING (ECF No. 198) is denied.

To the extent Pernell desires to file a second § 2255 motion, the Antiterrorism and Effective Death Penalty Act of 1996 restricts the jurisdiction of the district courts to hear second or successive applications for federal habeas corpus relief by prisoners attacking the validity of their convictions and sentences by establishing a "'gatekeeping' mechanism." Felker v. Turpin, 518 U.S. 651, 656-57 (1996). Specifically, "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). Pernell has not received permission from the United States Court of Appeals to file a second or successive § 2255 motion. Until that permission is granted, the Court will not consider any "proposed § 2255 motion[s]" from Pernell.

The Clerk is directed to send a copy of this Memorandum Order to Pernell and counsel of record.

It is so ORDERED.

/s/

REP

Robert E. Payne
Senior United States District Judge

Date: October 11, 2019
Richmond, Virginia