

STATE OF MINNESOTA

IN SUPREME COURT

A20-0956

FILED

September 15, 2020

**OFFICE OF
APPELLATE COURTS**

State of Minnesota,

Respondent,

vs.

Emem Ufot Udoth,

Petitioner.

O R D E R

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The motion of petitioner Emem Ufot Udoth for leave to proceed in forma pauperis be, and the same is, denied as there is no filing fee, *see* Minn. Stat. § 590.02 (2018).
2. The motion of petitioner Emem Ufot Udoth for release pending appeal, be and the same is, denied.
3. The motions of petitioner Emem Ufot Udoth filed on August 20, 2020, and August 25, 2020, to file amended petitions for further review be, and the same, are each denied.
4. The petition of Emem Ufot Udoth for further review filed on July 29, 2020, be, and the same is, denied.

Dated: September 15, 2020

BY THE COURT:

G. Barry Anderson
Associate Justice

FILED

STATE OF MINNESOTA

IN COURT OF APPEALS

July 17, 2020

**OFFICE OF
APPELLATE COURTS**

State of Minnesota,

O R D E R

Respondent,

#A20-0956

vs.

Emem Ufot Udoth,

Appellant.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. On July 14, 2020, appellant filed a notice of appeal from the Hennepin County District Court's June 2, 2020 order denying motions appellant had filed to vacate previous orders of the court denying his petition for postconviction relief and denying appellant's application to proceed in forma pauperis (IFP) in district court to obtain transcript preparation expenses.

2. The district court orders appellant moved to vacate were issued in connection with his first petition for postconviction relief. Appellant previously sought review of those orders in appeal A19-1129. When appellant failed to file a timely brief, this court dismissed appeal A19-1129 and appellant failed to seek further review from the supreme court. The district court's orders have now become final. We have also indicated that those orders are not before us in appellant's pending appeal, A20-0633, from the denial of his second petition for postconviction relief.

3. Appellant's motion to vacate the district court's prior orders were brought pursuant to rules 60.01 and 60.02 of the rules of civil procedure. The rules of criminal procedure, however, only permit defendants to appeal from a judgment of conviction, an order denying "a petition for postconviction relief under" Minnesota Statutes chapter 590, certain other orders (conditions of release, new trial, incompetency, double jeopardy), and some sentences. *See* Minn. R. Crim. P. 28.02, subd. 2. The criminal rules do not authorize an appeal from an order denying a motion to vacate previously issued orders denying postconviction relief or motions for relief pursuant to the rules of civil procedure.

4. To the extent that appellant sought relief on the basis of alleged errors in the district court's disposition of his prior claim of recantation, those errors could have been raised in his previous appeal (A19-1129) and so cannot now be revived by way of a motion to vacate.

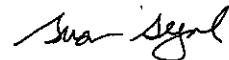
5. Appellant also seeks to appeal the district court's denial of his application to proceed IFP in order to obtain payment for the costs of transcribing audio exhibits introduced at an October 18, 2018 evidentiary hearing concerning appellant's first petition for postconviction relief. The rules of criminal procedure do not provide an independent basis on which a defendant may appeal from a district court's denial of an application to proceed IFP in the district court. *See* Minn. R. Crim. P. 28.02. Moreover, the rules of civil appellate procedure—even were they applicable in this matter—do not provide for an appeal from this order because it does not effectively determine any existing action or preclude the entry of a judgment from which an appeal may be taken. Minn. R. Civ. App.

P. 103.03(e). Accordingly, the district court's denial of appellant's application to proceed IFP may not be appealed.

IT IS HEREBY ORDERED: This appeal is dismissed as being taken from nonappealable orders.

Dated: July 17, 2020

BY THE COURT



Segal, Susan
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Susan L. Segal
Chief Judge