

Appendix "A"

United States Court of Appeals
for the Fifth Circuit

No. 21-30342



A True Copy
Certified order issued Feb 25, 2022

John W. Cuyler
Clerk, U.S. Court of Appeals, Fifth Circuit

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DAVID SAMUELS,

Defendant—Appellant.

Application for Certificate of Appealability from the
United States District Court for the Eastern District of Louisiana
USDC No. 2:09-CR-123-1

ORDER:

David Samuels, USM # 29129-034, is serving a 660-month sentence following his convictions for conspiracy to commit mail and wire fraud, mail fraud, wire fraud, use of fire to commit obstruction of justice, and making false statements. He now moves for a certificate of appealability (COA) to appeal the dismissal of his postjudgment motion styled "Motion to Recall Mandate, Correct Injustice, Brief in Support," wherein he challenges his convictions. The district court found that his motion was an unauthorized successive 28 U.S.C. § 2255 motion and dismissed it for lack of jurisdiction.

To proceed with this appeal, Samuels must obtain a COA. *See* 28 U.S.C. § 2253(c)(1). To obtain a COA, Samuels must show "that jurists of

Appendix B = Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

CIVIL ACTION

VERSUS

NO. 09-123

DAVID SAMUELS

SECTION "S"

ORDER AND REASONS

IT IS HEREBY ORDERED that David Samuels' Motion to Recall Mandate [and] Correct Injustice (Rec. Doc. 548) is **DENIED**, and this matter is **DISMISSED** with prejudice as a successive petition under 28 U.S.C. 2255.

BACKGROUND

Following a trial by jury, defendant was convicted in January 2011 of fifteen counts, which included conspiracy to commit mail fraud, wire fraud, use of fire to commit obstruction of justice, use of fire to commit mail fraud, making a false statement and aiding and abetting the commission of mail fraud, use of fire to commit mail fraud, and wire fraud. The court subsequently sentenced Samuels to serve 900 months in the custody of the Bureau of Prisons. After defendant succeeded on some of his claims on direct appeal, his sentence was reduced to 660 months imprisonment.

In 2015, defendant filed a §2255 motion which the court denied. The court also declined to issue a certificate of appealability, finding that an appeal would not be taken in good faith. Thereafter, the United States Court of Appeals for the Fifth Circuit denied Samuels' motion for a certificate of appealability. A motion for relief from judgment was denied by the court in 2017, and the Fifth Circuit also denied a certificate of appealability from that ruling. Defendant filed a motion pursuant to 28 U.S.C. 2241 in August 2020, alleging that the Eastern District of


Louisiana was not a properly constituted federal court. This court dismissed that motion for lack of jurisdiction.

In this motion, defendant argues that this court should vacate “his [18 U.S.C. §§ 844(h)(1) and 2 convictions” on numerous substantive grounds. This motion is premised on Fed. R. Civ. Proc. 60(b). A Rule 60(b) motion that is clearly directed to the merits of a habeas is construed as a successive § 2255 motion. United States v. Hernandez, 708 F.3d 680, 681 (5th Cir. 2013). Absent a certificate of appealability, the court does not have jurisdiction to consider a successive claim. Id.

Defendant raises several substantive legal claims in his motion, including void-for-vagueness challenges, Sixth Amendment arguments, and a claim under the First Amendment. Defendant has not obtained the required certificate of appealability. The court therefore lacks jurisdiction to entertain his successive motion brought under 28 U.S.C. § 2255. Accordingly,

IT IS HEREBY ORDERED that David Samuels’ Motion to Recall Mandate [and] ‘Correct Injustice (Rec. Doc. 548) is **DENIED**, and this matter is **DISMISSED** with prejudice as a successive petition under 28 U.S.C. 2255.

New Orleans, Louisiana, this 18th day of May, 2021.


MARY ANN VIAL LEMMON
UNITED STATES DISTRICT JUDGE

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