

ATTACHMENT B

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

November 24, 2021

Lyle W. Cayce
Clerk

No. 20-11242

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

KEVIN D. MOORE,

Defendant—Appellant.

Application for Certificate of Appealability from
the United States District Court
for the Northern District of Texas
No. 3:20-CV-3144

ORDER:

IT IS ORDERED that appellant's motion for a certificate of appealability is DENIED. He requests that the district court take judicial notice of certain alleged facts. He has not shown entitlement to relief under 28 U.S.C. § 2255 or otherwise.

IT IS FURTHER ORDERED that appellant's motion to proceed *in forma pauperis* is DENIED.

/s/ Jerry E. Smith
JERRY E. SMITH
United States Circuit Judge

RECEIVED DECEMBER 29, 2021

ATTACHMENT C

Case 3:07-cr-00125-O Document 231 Filed 03/18/21 Page 1 of 1 PageID 2678

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEVIN D. MOORE,

Defendant.

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Criminal Action No. 3:07-cr-125-O

USCA No. 20-11242

ORDER OF THE COURT ON CERTIFICATE AS TO APPEALABILITY

This is a criminal action in which Defendant Kevin D. Moore has persisted, through a variety of motions, with his claim that the prosecutor in this case was not a duly authorized Assistant United States Attorney and therefore lacked lawful authorization to prosecute him. The Court denied Moore's original motion (Order, ECF No. 204) and denied his Petition to Alter, Amend, or Reverse a Judgment Pursuant to Fed. R. Civ. P. 59(e) (Order, ECF No. 216). Moore filed a Notice of Appeal challenging the Court's order on his Rule 59(e) motion. *See* ECF No. 217.

Considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), a Certificate of Appealability is hereby **DENIED**.

REASONS FOR DENIAL: For the reasons stated in the Court's order (ECF No. 216), which the Court hereby adopts and incorporates by reference, Defendant has failed to demonstrate that jurists of reason would find it debatable whether the Rule 59(e) motion states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether this Court was correct in its procedural ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Morris v. Dretke*, 379 F.3d 199, 204 (5th Cir. 2004).

SO ORDERED this 18th day of March, 2021.


Reed O'Connor
UNITED STATES DISTRICT JUDGE

RECEIVED APRIL 2, 2021

ATTACHMENT D(1)

Case 3:07-cr-00125-O Document 216 Filed 12/03/20 Page 1 of 2 PageID 2608

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEVIN D. MOORE,

Defendant.

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Criminal Action No. 3:07-cr-125-O

ORDER

Before the Court is Defendant Moore's Petition to Alter, Amend, or Reverse a Judgment Pursuant to Fed. R. Civ. P. 59(e). ECF No. 213. Upon review of the motion and of the record in this case, the Court finds and orders as follows:

Moore asks the Court to reconsider its order (ECF No. 204) denying his request for "Judicial Notice of Adjudicative Facts, Pursuant to Federal Rule of Evidence Rule 201" (ECF No. 192). Moore wants the Court to take judicial notice of responses to letters and Freedom of Information Act requests that he and another federal inmate, Charles Hunter, have received regarding the employment of Assistant United States Attorney Aisha Saleem, the prosecutor in this action. *See id.* Moore claims that Saleem was not a duly authorized Assistant United States Attorney and therefore lacked lawful authorization to prosecute him. *See* ECF No. 213 at 2.

"A motion to alter or amend judgment under Rule 59(e) must clearly establish either a manifest error of law or fact or must present newly discovered evidence and cannot be used to raise arguments which could, and should, have been made before the judgment issued." *Schiller v. Physicians Resource Group Inc.*, 342 F.3d 563, 567 (5th Cir. 2003) (internal quotations omitted). Although a district court has considerable discretion in deciding whether to alter or amend a judgment, the court must "strike the proper balance between the need for finality and the need to

RECEIVED DECEMBER 8, 2020

render just decisions on the basis of all the facts.” *Hale v. Townley*, 45 F.3d 914, 921 (5th Cir. 1995). With this balance in mind, the United States Court of Appeals for the Fifth Circuit has observed that Rule 59(e) motions are disfavored and should be granted only sparingly. *See Southern Constructors Group, Inc. v. Dynalectric Co.*, 2 F.3d 606, 611 (5th Cir. 1993).

Here, Defendant Moore reasserts the arguments set forth in his original motion which have been addressed by the Court. Moore has failed to establish either a manifest error of law or fact and he has not presented any newly discovered evidence. Rather, he reiterates arguments set forth in his original motion which were addressed in the Court’s prior order and he argues that the Court erred in its ruling. *See* ECF No. 204.

The Court previously imposed a minor sanction against Moore for filing duplicative and frivolous motions. *See* ECF No. 172. In that order, the Clerk of Court was “directed to docket any future filing in this case as a “Notice to the Court” unless the document submitted relates to an appeal in this action.” *Id.* at 2. Moore has repeatedly been warned that the continued filing of repetitive, meritless, and frivolous motions may result in sanctions. *See* ECF Nos. 168, 210, 214.

Kevin D. Moore is once again admonished that if he persists in filing meritless and/or repetitive motions, the Court will consider imposing additional sanctions. This is the Court’s final warning.

For the foregoing reasons, Plaintiff’s Rule 59(e) motion (ECF No. 213) is **DENIED**.

SO ORDERED this 3rd day of December, 2020.


Reed O'Connor
UNITED STATES DISTRICT JUDGE

ATTACHMENT E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEVIN D. MOORE,

Defendant.

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Criminal Action No. 3:07-cr-125-O

ORDER

Before the Court is Defendant Kevin D. Moore's "Judicial Notice of Adjudicative Facts, Pursuant to Federal Rule of Evidence Rule 201." ECF No. 192. Moore asks the Court to take judicial notice of responses to letters and Freedom of Information Act requests that he and another federal inmate, Charles Hunter, have received regarding the employment of Assistant United States Attorney Aisha Saleem, the prosecutor in this action. *See id.* Rule 201, Federal Rules of Evidence, provides that the Court may take judicial notice of an adjudicative fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Fed. R. Evid. 201(b). "[A]djudicative facts are those to which the law is applied in the process of adjudication. They are the facts that normally go to the jury in a jury case." Rule 201 Advisory Committee Note to Subdivision (a) (citing 2 Administrative Law Treatise 353). "With respect to judicial notice of adjudicative facts, the tradition has been one of caution in requiring that the matter be beyond reasonable controversy." Rule 201 Advisory Committee Note to Subdivision (b).

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“[A] district court must ‘determine the true nature of a pleading by its substance, not its label.’” *United States v. Hunter*, 744 F. App’x 876, 877 (5th Cir. 2018) (quoting *Armstrong v. Capshaw, Goss & Bowers, LLP*, 404 F.3d 933, 936 (5th Cir. 2005)). Moore claims that Aisha “Saleem, during the relevant time period, was NOT a duly appointed or authorized attorney for the government” and was therefore not authorized to prosecute him. *See* ECF No. 192 at 3. Here, Moore seeks to challenge the validity of his criminal conviction. Because the primary means of doing so is a motion under 28 U.S.C. § 2255, the Court characterizes Moore’s pleading as a § 2255 motion. *See United States v. Hunter*, 744 F. App’x 876, 877 (5th Cir. 2018) (characterizing a petition for judicial notice of adjudicative facts alleging prosecutors lacked sufficient written authority for their appointments as a § 2255 motion).

Moore filed a previous § 2255 motion on September 26, 2011. *See* ECF No. 149. The motion was denied on the merits. *See Moore v. United States*, No. 3:11-cv-2540-O, ECF Nos 29, 39, 40 (N.D. Tex. 2013). Because the instant motion, construed as a § 2255 motion, is successive, it is subject to the certification provisions set forth in 28 U.S.C. § 2255(h), as amended by the Antiterrorism and Effective Death Penalty Act of 1996. *See In re Tolliver*, 97 F.3d 89, 90 (5th Cir. 1996). The statute provides that a second or successive motion filed by a person attacking a sentence under § 2255 “must be certified as provided in section 2244 by a panel of the appropriate court of appeals” before it can be considered by the district court. 28 U.S.C. § 2255(h); 28 U.S.C. § 2244(b)(3)(A); *In re Elwood*, 408 F.3d 211, 212 (5th Cir. 2005).

The appellate certification requirement for a successive § 2255 motion “acts as a jurisdictional bar to the district court’s asserting jurisdiction over any successive [motion to vacate] until [the Fifth Circuit] has granted the [movant] permission to file one.” *United States v. Key*, 205

F.3d 773, 774 (5th Cir. 2000); *accord Crone v. Cockrell*, 324 F.3d 833, 836 (5th Cir. 2003). Because Moore filed a prior § 2255 motion that was denied on the merits, this Court lacks jurisdiction to consider the present motion unless leave to file is granted by the Fifth Circuit Court of Appeals.

It is therefore **ORDERED** that the instant pleading (ECF No. 192), properly construed as a motion to vacate, set aside, or correct sentence filed pursuant to 28 U.S.C. § 2255, is **DISMISSED** for lack of jurisdiction. This dismissal is without prejudice to Moore's right to file a motion for leave to file a second or successive § 2255 motion in the United States Court of Appeals for the Fifth Circuit pursuant to 28 U.S.C. § 2255(h) and § 2244(b)(3)(A).

For statistical purposes, the **Clerk of Court** is directed to open and immediately close a new civil action (nature of suit code 510, motion to vacate, set aside, or correct sentence).

SO ORDERED this 15th day of October, 2020.


Reed O'Connor
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEVIN D. MOORE,

Defendant.

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Criminal Action No. 3:07-cr-125-O

3:20-cr-03141
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ORDER

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(1) is generally known within the trial court's territorial jurisdiction; or

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"[A] district court must 'determine the true nature of a pleading by its substance, not its label.'" *United States v. Hunter*, 744 F. App'x 876, 877 (5th Cir. 2018) (quoting *Armstrong v. Capshaw, Goss & Bowers, LLP*, 404 F.3d 933, 936 (5th Cir. 2005)). Moore claims that Aisha "Saleem, during the relevant time period, was NOT a duly appointed or authorized attorney for the government" and was therefore not authorized to prosecute him. *See* ECF No. 192 at 3. Here, Moore seeks to challenge the validity of his criminal conviction. Because the primary means of doing so is a motion under 28 U.S.C. § 2255, the Court characterizes Moore's pleading as a § 2255 motion. *See United States v. Hunter*, 744 F. App'x 876, 877 (5th Cir. 2018) (characterizing a petition for judicial notice of adjudicative facts alleging prosecutors lacked sufficient written authority for their appointments as a § 2255 motion).

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For statistical purposes, the **Clerk of Court** is directed to open and immediately close a new civil action (nature of suit code 510, motion to vacate, set aside, or correct sentence).

SO ORDERED this 15th day of October, 2020.


Reed O'Connor
UNITED STATES DISTRICT JUDGE