

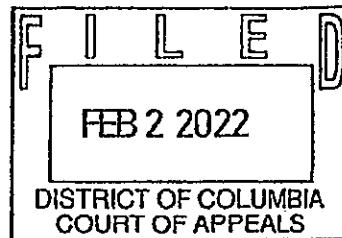
District of Columbia
Court of Appeals

No. 21-CO-562

BERNARD J. BATTLE,

Appellant,

v.



1994 FEL 6549

UNITED STATES,

Appellee.

BEFORE: Glickman and Easterly, Associate Judges, and Ruiz, Senior Judge.

JUDGMENT

On consideration of appellee's motion for summary affirmance, appellant's brief and appendix, and the record on appeal, it is

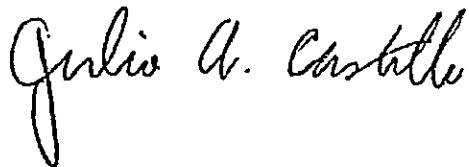
ORDERED that appellee's motion for summary affirmance is granted. *See Watson v. United States*, 73 A.3d 130, 131 (D.C. 2013); *Oliver T. Carr Mgmt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979). The trial court did not abuse its discretion by denying appellant's fifth D.C. Code § 23-110 (2012 Repl.) motion as procedurally barred. Appellant previously raised unsuccessful claims relating to his eligibility to be sentenced under the Youth Rehabilitation Act and ineffective assistance of counsel in the Superior Court and this court. *See* D.C. Code § 23-110 (e) (2012 Repl.) ("The [trial] court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner."); *Battle v. United States*, Nos. 17-CO-919 & 18-CO-891, Mem. Op & J. at 3 (D.C. May 3, 2019); *Bethea v. United States*, 170 A.3d 192, 194 (D.C. 2017) ("We review a trial court's decision to deny a § 23-110 petition without hearing for abuse of discretion."); (citation omitted); *Bradley v. United States*, 881 A.2d 640, 645 (D.C. 2005) ("Where the original motion was denied on the merits, and affirmed by this court on appeal . . . all the claims [appellant] raised in his first motion, including ineffective assistance of counsel, cannot be raised again in a second (or third or fourth) motion."); *Minor v. United States*, 647 A.2d 770, 776 (D.C. 1994) (holding that no abuse of discretion exists when the trial court decided to deny the § 23-110 motion without a hearing where this court had previously entertained a motion for similar relief); *Doepel v. United States*, 510 A.2d 1044, 1045-46 (D.C. 1986) ("It is

No. 21-CO-562

well-settled that where an appellate court has disposed of an issue on appeal, it will not be considered afresh on collateral attack in a trial court of the same judicial system, absent special circumstances"); accord *Diamen v. United States*, 725 A.2d 501, 509-10 (D.C. 1999) (explaining one division of this court cannot overrule prior division's decision and where the appellate court has disposed of issue on appeal, it will not be considered anew on collateral attack in a trial court of the same judicial system absent special circumstances). It is

FURTHER ORDERED and ADJUDGED that the order on appeal is affirmed.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO
Clerk of the Court

Copies e-served to:

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cml

Appendix A

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

UNITED STATES OF AMERICA

v.

BERNARD J. BATTLE

Crim. No. 1994 FEL 6549

Judge Jonathan H. Pitman

ORDER

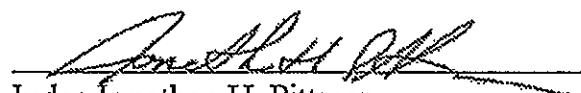
On June 6, 2020, the Court entered an order denying defendant's August 1, 2018 motion seeking relief from a prior order denying his third motion pursuant to D.C. Code § 23-110. At the time he filed his third 23-110 motion, defendant's appeal from the court's denial of his fourth 23-110 motion was pending in the Court of Appeals. The Court of Appeals thereafter affirmed the denial of defendant's third and fourth 23-110 motions in an unpublished Memorandum Opinion and Judgment issued on May 3, 2019.

Defendant's August 1, 2018 motion sought relief under Civil Rule 60(b). The Court denied defendant's motion on the ground that defendant had failed to establish extraordinary circumstances that would justify relief under Rule 60(b)(6). *See* June 6, 2020 Order. The Court noted in a footnote that it could have treated defendant's Rule 60(b) motion as his fifth 23-110 motion, and, had it done so, it would have denied it as procedurally barred because it raised claims that had previously been addressed and rejected by the trial court and Court of Appeals.

Undeterred by the Court's *dicta*, defendant filed a fifth motion for relief pursuant to D.C. Code § 23-110 on July 23, 2020, a motion for appointment of counsel on March 9, 2021, and an "Addendum Supplement" to his fifth 23-110 motion on May 20, 2021. Defendant raises no new arguments – he merely repeats his contention, already rejected multiple times by the sentencing judge and Court of Appeals, that he should have been sentenced under the Youth Rehabilitation Act, D.C. Code § 24-901, *et seq.*, and that his counsel was ineffective.

The Court concludes that defendant's latest 23-110 motion is procedurally barred. Accordingly, it is, this 2nd day of July, 2021, hereby

ORDERED, that defendant's motions for relief pursuant to D.C. Code § 23-110 and for appointment of counsel are **DENIED**.



Judge Jonathan H. Pittman

Service List:

U.S. v. Battle, 1994 FEL 6549

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