

W.D.N.Y.
00-cr-6149
07-cv-6536
Larimer, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of May, two thousand twenty-three.

Present:

Rosemary S. Pooler,
Richard C. Wesley,
Michael H. Park,
Circuit Judges.

Willie J. Gamble,

Petitioner-Appellant,

v.

22-3224

United States of America,

Respondent-Appellee.

Appellant, pro se, moves for in forma pauperis ("IFP") status and other relief. Upon due consideration, it is hereby ORDERED that the IFP motion is DENIED as unnecessary because the district court granted IFP status and has not revoked it. *See* Fed. R. App. P. 24(a)(3).

Insofar as Appellant sought relief under 28 U.S.C. § 2255 in the district court, we construe Appellant as seeking a certificate of appealability ("COA"). Upon due consideration, it is hereby ORDERED that a COA is DENIED and the appeal is DISMISSED because Appellant was not in custody when he filed his motion in the district court. *See Scanio v. United States*, 37 F.3d 858, 860 (2d Cir. 1994) (requiring that a movant "satisfy the jurisdictional 'in custody' requirement" to seek § 2255 relief).

To the extent Appellant sought other relief in the district court, it is further ORDERED that the remaining motions are DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see* 28 U.S.C. § 1915(e).

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIE J. GAMBLE,

Defendant.

DECISION AND ORDER

00-CR-6149L

21-CV-6273L

Defendant Willie J. Gamble was charged in a two-count indictment with firearms offenses. On September 18, 2001, following a bench trial, this Court found Gamble guilty on both counts. On June 30, 2003, the Court sentenced Gamble principally to a term of imprisonment of 216 months. (Dkt. #91.) The conviction and sentence were affirmed on appeal to the Court of Appeals for the Second Circuit. 388 F.3d 74 (2d Cir. 2004); 204 F.App'x 933 (2d Cir. 2006).

Gamble has now filed a motion pursuant to 28 U.S.C. § 2255 to vacate his conviction and sentence. (Dkt. #132.) Although it is difficult to make sense of the basis for his motion, Gamble appears to assert claims that his due process and Eighth Amendment rights have been violated because he was convicted under a statute that “didn’t apply to him.” (Dkt. #132 at 4.)

Regardless of the grounds for his motion, the motion must be dismissed because Gamble was not in custody at the time he filed the motion. As explained in the Government’s response to


the motion (Dkt. #134), Gamble has fully served all his prison time, and his post-incarceration supervised release time, which expired on January 25, 2018. (Dkt. #134.)

Section 2255 permits a person "in custody under a sentence of a [federal] court" to vacate, set aside or correct the sentence. Once the person's sentence has been fully served, however, he is no longer in custody, and therefore cannot challenge the sentence or conviction. *See United States v. Brito*, 20 Cr. 63, 2022 WL 3025833 (S.D.N.Y. Aug. 1, 2022); *Rice v. United States*, No. 02-CR-723, 2020 WL 8669817 (S.D.N.Y. Nov. 16, 2020). This Court therefore lacks jurisdiction to entertain Gamble's motion, and the motion must be dismissed.

CONCLUSION

Defendant's motion to vacate, set aside or correct his sentence (Dkt. #132) is denied. The Court declines to issue a certificate of appealability because defendant has failed to make a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(1).

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
December 5, 2022.