

United States Court of Appeals
for the Fifth Circuit

No. 22-50751

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JIMMY ZAVALA,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:04-CR-425-2

ON PETITION FOR REHEARING

Before HIGGINBOTHAM, GRAVES, and Ho, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

April 17, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 22-50751 USA v. Zavala
USDC No. 5:04-CR-425-2

Enclosed is an order entered in this case.

See FRAP and Local Rules 41 for stay of the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

Roeshawn Johnson

By:
Roeshawn Johnson, Deputy Clerk
504-310-7998

Mr. Philip Devlin
Mr. Jimmy Zavala

United States Court of Appeals for the Fifth Circuit

No. 22-50751
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 17, 2023

Lyle W. Cayce
Clerk

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USDC No. 5:04-CR-425-2

Before HIGGINBOTHAM, GRAVES, and Ho, *Circuit Judges.*

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the appeal is DISMISSED for lack of jurisdiction.

Since 2008, Zavala has unsuccessfully challenged the validity of his 2005 convictions through repeated, and often repetitive and successive § 2255 motions and attendant postjudgment and discovery motions. Recently,

a panel of this court warned Zavala that filing frivolous, repetitive, or otherwise abusive pleadings could result in the imposition of sanctions. *See Zavala*, No. 22-50318. Zavala is again WARNED that filing frivolous, repetitive, or otherwise abusive pleadings in this court or any court subject to this court's jurisdiction could result in the imposition of sanctions, including dismissal, monetary sanctions, and restrictions on his ability to file pleadings in this court or any court subject to this court's jurisdiction.

United States Court of Appeals for the Fifth Circuit

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UNITED STATES OF AMERICA,

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Appeal from the United States District Court
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USDC No. 5:04-CR-425-2

Before HIGGINBOTHAM, GRAVES, and Ho, *Circuit Judges.*

PER CURIAM:*

Jimmy Zavala, federal inmate # 49053-180, appeals the denial of his motion to correct the record relating to the appeal of his fifth 28 U.S.C. § 2255 motion attacking his 2005 convictions for various drug, firearms, money laundering, and conspiracy offenses. Zavala also moves to supplement the record on appeal with various documents relating to his

* This opinion is not designated for publication. *See 5TH CIR. R. 47.5.*

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criminal case and to withdraw the memorandum he filed in support of his motion to supplement the record.

“[W]e must consider the basis of our own jurisdiction, *sua sponte* if necessary.” *Perez v. Stephens*, 784 F.3d 276, 280 (5th Cir. 2015). Our appellate jurisdiction extends to “appeals from all *final* decisions of the district courts of the United States,” 28 U.S.C. § 1291 (emphasis added), as well as a limited number of appealable interlocutory orders, 28 U.S.C. § 1292(a). The denial of Zavala’s motion to correct the record, which related to his already-resolved appeal in another case, was not an appealable final order because it did not end the litigation of his prior § 2255 motion on the merits. *See Cunningham v. Hamilton Cnty., Ohio*, 527 U.S. 198, 204 (1999). Nor did it constitute an appealable interlocutory order. Moreover, because we have previously resolved Zavala’s appeal of the denial of his fifth § 2255 motion, the issues raised in his motion to correct are now moot. *See United States v. Heredia-Holguin*, 823 F.3d 337, 340 (5th Cir. 2016); *United States v. Zavala*, No. 22-50318 (5th Cir. Nov. 18, 2022) (unpublished panel order).

Accordingly, we DISMISS the appeal for lack of jurisdiction. Zavala’s motions to supplement the record and to withdraw the memorandum in support of his motion to supplement the record are DENIED.

Since 2008, Zavala has unsuccessfully challenged the validity of his 2005 convictions through repeated, and often repetitive and successive § 2255 motions and attendant postjudgment and discovery motions. Recently, a panel of this court warned Zavala that filing frivolous, repetitive, or otherwise abusive pleadings could result in the imposition of sanctions. *See Zavala*, No. 22-50318. Zavala is again WARNED that filing frivolous, repetitive, or otherwise abusive pleadings in this court or any court subject to this court’s jurisdiction could result in the imposition of sanctions, including

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dismissal, monetary sanctions, and restrictions on his ability to file pleadings in this court or any court subject to this court's jurisdiction.

United States Court of Appeals

FIFTH CIRCUIT
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March 17, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 22-50751 USA v. Zavala
USDC No. 5:04-CR-425-2

Enclosed is a copy of the court's decision. The court has entered judgment under **FED. R. APP. P. 36**. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through 41, and **5TH CIR. R. 35, 39, and 41** govern costs, rehearings, and mandates. **5TH CIR. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following **FED. R. APP. P. 40** and **5TH CIR. R. 35** for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. **5TH CIR. R. 41** provides that a motion for a stay of mandate under **FED. R. APP. P. 41** will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under **FED. R. APP. P. 41**. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk



By: Casey A. Sullivan, Deputy Clerk

Enclosure(s)

Mr. Jimmy Zavala