

Appendix - B

U.S. Court of Appeals

06/27/24 Order

(2) Pages

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 26, 2024*
Decided June 27, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 24-1515

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ANDREW J. JOHNSTON,
Defendant-Appellant.

Appeal from the United States
District Court for the Northern
District of Illinois, Eastern Division.

No. 1:17-cr-00517

Rebecca R. Pallmeyer,
Chief Judge.

ORDER

Andrew Johnston has filed a multitude of post-judgment motions in his criminal case. Last year we warned him that further frivolous motions would lead to an order under *Alexander v. United States*, 121 F.3d 312 (7th Cir. 1997). See *United States v. Johnston*, No. 23-2792 (7th Cir. Nov. 27, 2023).

The warning was ineffectual. Johnston is back with another appeal, this time contending that he is entitled to relief under Fed. R. Civ. P. 60(b) because he has evidence justifying a new trial. A similar motion was filed in 2022, under Fed. R. Crim.

* This successive appeal has been submitted to the original panel under Operating Procedure 6(b). We have unanimously agreed to decide this case without argument because the brief and record adequately present the facts and legal arguments, and argument would not significantly aid the court. See Fed. R. App. P. 34(a)(2)(C).

P. 33, and denied. Related arguments also were advanced in an unsuccessful collateral attack under 28 U.S.C. §2255. The three-year time limit under Rule 33 has expired, as we informed Johnston last November, but this did not deter him from citing a different rule in support of the same arguments. The district court denied his motion in a brief order.

We do not address the merits of this motion. It is a disguised collateral attack on the judgment, which goes nowhere because Johnston has not received (or for that matter sought) this court's permission. See 28 U.S.C. §2255(h), incorporating 28 U.S.C. §2244. Criminal Rule 33 provides an alternative to §2255 in some situations, but that rule is no longer available to Johnston. Civil Rule 60 is not a means to evade limits on Criminal Rule 33 or collateral review. See *Gonzalez v. Crosby*, 545 U.S. 524 (2005). The district court was obliged to deny the motion, as it did.

Because Johnston did not heed our warning, we now fine him \$1,000. Until the fine is paid, this court will treat any further post-judgment appeals in this criminal case as summarily affirmed on the 30th day after filing. The district court likewise may choose to deem Johnston's motions denied without the need for an explanation. He has received quite enough judicial attention to these frivolous motions.

Any request for permission to file a successive collateral attack will be distributed to this panel for review, and a non-frivolous request will be addressed on the merits. We stress "non-frivolous". A frivolous request will be deemed denied on the 30th day under the *Alexander* procedure.

Appendix - A

U.S. District Court

02/28/24 Order

(1) Page

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**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF NextGen 1.7.1.1
Eastern Division**

UNITED STATES OF AMERICA

Plaintiff,

v.

Case No.: 1:17-cr-00517

Honorable Rebecca R. Pallmeyer

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, February 28, 2024:

MINUTE entry before the Honorable Rebecca R. Pallmeyer as to Andrew Johnston: Andrew Johnston, who has challenged his 2019 conviction for attempted bank robbery in myriad ways, has filed another such motion. This time, he asks the court to vacate its March 29, 2022 order [425] affirmed by the Court of Appeals [453]— denying Johnston's Fed. R. Crim. P. 33(b)(1) motion for a new trial. As grounds for his request that the court reinstate the motion, Johnston reports that in response to a FOIA request, the FBI has confirmed that it has cell phone location data for the period of time in which the offense conduct occurred. Johnston says that data was not produced to him prior to trial. The court has exhaustively explained that there was probable cause for Johnston's arrest and evidence of his guilt beyond a reasonable doubt. The records he now understands are in FBI custody would not change any of that information and would not provide a basis for any timely or meritorious motion for relief from the conviction. Johnston has been warned by the Court of Appeals against further frivolous filings. This motion [516] is denied. This order is final and appealable. Mailed notice. (cp,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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Appendix-C

U.S. Court of Appeals
08/01/24 Order Denying
Rehearing En Banc
(1) Page

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

August 1, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 24-1515

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ANDREW J. JOHNSTON,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 1:17-cr-00517

Rebecca R. Pallmeyer,
Judge.

ORDER

Defendant-Appellant filed a petition for rehearing and rehearing en banc on July 17, 2024. No judge* in regular active service has requested a vote on the petition for rehearing en banc, and all the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.

*Circuit Judge Maldonado did not participate in the consideration of this petition.

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