

United States Court of Appeals
for the Fifth Circuit

No. 25-10667

United States Court of Appeals
Fifth Circuit

FILED

September 22, 2025

Lyle W. Cayce
Clerk

IN RE JOHN LOUIS ATKINS,

Petitioner.

Petition for Writ of Mandamus to the
United States District Court
for the Northern District of Texas
USDC No. 1:15-CR-55-1

UNPUBLISHED ORDER

Before JONES, SMITH, and HIGGINSON, *Circuit Judges.*

PER CURIAM:

John Louis Atkins, Texas prisoner # 2184778, has filed in this court a pro se petition for a writ of mandamus and a motion requesting leave to file his mandamus petition in forma pauperis (IFP). The motion for leave to proceed IFP is GRANTED.

Although Atkins is currently incarcerated in a state prison, the instant mandamus petition relates to his federal sentences for supervised release violations. As Atkins points out, in the underlying criminal case, he was acquitted by a jury on the charge of being a felon in possession of a firearm. Despite his acquittal at trial, the district court simultaneously revoked Atkins's supervised release in two other criminal cases after determining that he had violated the conditions of his supervision by possessing a firearm, and

it sentenced Atkins to serve additional terms of imprisonment on the supervised release violations, to be followed by another period of supervised release. *See United States v. Atkins*, No. 1:15-CR-52-1 (N.D. Tex. June 10, 2016); *United States v. Atkins*, No. 1:15-CR-53-1 (N.D. Tex. June 10, 2016).

In consolidated appeals, we affirmed the district court's revocation judgments, determining that the evidence was sufficient to support a finding by a preponderance of the evidence that Atkins possessed a firearm. *United States v. Atkins*, 696 F. App'x 152, 153 (5th Cir. 2017). Citing *United States v. Teran*, 98 F.3d 831, 855-56 (5th Cir. 1996), we noted the rule that "[t]he acquittal at the criminal trial does not preclude a revocation based on the conduct underlying the criminal charges." *Atkins*, 696 F. App'x at 153.

Dissatisfied with that result, Atkins filed 28 U.S.C. § 2255 motions seeking to vacate the revocation sentences; the district court denied the § 2255 motions, and Atkins did not appeal. *See United States v. Atkins*, No. 1:15-CR-52-1 (N.D. Tex. Dec. 7, 2018); *United States v. Atkins*, No. 1:15-CR-53-1 (N.D. Tex. Dec. 7, 2018). Atkins also filed motions under Federal Rule of Civil Procedure 60(b)(4) that attacked the revocation judgments based on a contention that the district court lacked subject-matter jurisdiction on account of his acquittal on the firearm charge. The district court dismissed the Rule 60(b)(4) motions, which it alternatively construed as successive § 2255 motions, for lack of jurisdiction. *See United States v. Atkins*, No. 1:15-CR-52-1 (N.D. Tex. June 22, 2023); *United States v. Atkins*, No. 1:15-CR-53-1 (N.D. Tex. June 22, 2023).

Atkins did not appeal from either of the dismissal orders. Instead, in October 2023, Atkins filed in this court two nearly identical mandamus petitions in which he again raised the issue of the district court's subject-matter jurisdiction, asserted that the district court had evaded the jurisdictional issue, and requested that we compel the district court to rule

on the question whether it had jurisdiction in the revocation proceedings after Atkins was found not guilty of the offense conduct which formed the basis for the alleged supervised release violation. This court denied the petitions. *See In re Atkins*, No. 23-11108 c/w No. 23-11114 (5th Cir. Dec. 28, 2023) (unpublished).

Returning to the district court, Atkins, invoking 18 U.S.C. § 3742(a), filed motions seeking review of his revocation sentences in which he again challenged the court's jurisdiction. The district court construed the motions as successive § 2255 motions and dismissed them for want of jurisdiction. *See United States v. Atkins*, No. 1:15-CR-52-1 (N.D. Tex. Sept. 27, 2024); *United States v. Atkins*, No. 1:15-CR-53-1 (N.D. Tex. Sept. 27, 2024). Atkins appealed, and he requested in each case that we issue a certificate of appealability (COA). This court denied his COA requests; additionally, taking note of his history of filing "pleadings raising the same claims," this court warned Atkins "that the further filing of repetitive and frivolous pleadings attacking his revocation judgment or sentence may result in the imposition of sanctions, including dismissal, monetary sanctions, and limits on his ability to file pleadings in this court and any court subject to this court's jurisdiction." *United States v. Atkins*, No. 24-10925 c/w No. 24-10927, at 2-3 (5th Cir. Mar. 7, 2025) (unpublished).

In the instant mandamus petition, Atkins once again advances his contentions that the district court lacked subject-matter jurisdiction in the revocation proceedings on account of his acquittal at trial of the offense conduct which formed the basis for the alleged supervised release violation, and that the district court has avoided ruling on the jurisdictional issue. As he did in his previous mandamus petitions, he requests that we compel the district court to rule on the question whether it had jurisdiction in the revocation proceedings.

“Mandamus is an extraordinary remedy that should be granted only in the clearest and most compelling cases.” *In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987). A party seeking mandamus relief must show both that he has no other adequate means to obtain the requested relief and that he has a “clear and indisputable” right to the writ. *Id.* (internal quotation marks and citation omitted). The condition that a party have no other means to obtain relief is “designed to ensure that the writ will not be used as a substitute for the regular appeals process.” *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380-81 (2004).

As we previously advised Atkins, because he had an appellate remedy, in which he had the opportunity to raise any challenges he deemed appropriate, he may not use the extraordinary remedy of mandamus to put at issue the district court’s jurisdiction to revoke his supervised release. *See Willy*, 831 F.2d at 549. Under the circumstances, we again decline to invoke the mandamus remedy to compel the district court to now address its jurisdiction, as any complaints could have been raised in the revocation proceedings themselves and pursued via the ordinary appeals process. *See id.* Accordingly, the petition for a writ of mandamus is DENIED.

Because Atkins has failed to heed our warning, he is further WARNED that any future frivolous or repetitive filings in this court or any court subject to this court’s jurisdiction will subject him to sanctions. He is DIRECTED to review all pending matters and move to dismiss any that are frivolous, repetitive, or otherwise abusive.

United States Court of Appeals
for the Fifth Circuit

No. 24-10925
CONSOLIDATED WITH
No. 24-10927

United States Court of Appeals
Fifth Circuit

FILED

April 23, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOHN LOUIS ATKINS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:24-CV-164
USDC No. 1:24-CV-165

ON PETITION FOR REHEARING EN BANC

UNPUBLISHED ORDER

Before JONES, DUNCAN, and DOUGLAS, *Circuit Judges.*

PER CURIAM:

Treating the petition for rehearing en banc as a motion for reconsideration (5TH CIR. R.40 I.O.P.), the motion for reconsideration

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c/w No. 24-10927

is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P.40 and 5TH CIR. R.40), the petition for rehearing en banc is DENIED.

United States Court of Appeals
for the Fifth Circuit

No. 24-10925
AND
No. 24-10927

United States Court of Appeals
Fifth Circuit

FILED

March 7, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOHN LOUIS ATKINS,

Defendant—Appellant.

Application for Certificate of Appealability
the United States District Court
for the Northern District of Texas
USDC Nos. 1:24-CV-164, 1:15-CR-52-1
USDC Nos. 1:24-CV-165, 1:15-CR-53-1

UNPUBLISHED ORDER

Before JONES, DUNCAN, and DOUGLAS, *Circuit Judges.*

PER CURIAM:

John Lewis Atkins, former federal prisoner # 11028-091 and current Texas prisoner # 2184778, moves for certificates of appealability (COA) to appeal the dismissal of his two postjudgment motions, respectively seeking relief from the district court's judgments revoking his supervised release

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based on its finding that he had possessed a firearm. In each case, the district court construed the postjudgment motion as an unauthorized successive 28 U.S.C. § 2255 motion and dismissed it for lack of jurisdiction. Because the motions set forth the same or similar arguments, the court CONSOLIDATES them sua sponte.

As a preliminary matter, Atkins raises the following arguments for the first time in his COA pleadings: (i) he is actually innocent of possessing a firearm; (ii) his revocation judgments violated the Double Jeopardy Clause and the principles of collateral estoppel; and (iii) the prosecution in a related state criminal proceeding suppressed a police report in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). As such, this court lacks jurisdiction to consider them. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018).

Otherwise, a COA may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where, as here, the district court’s denial of federal habeas relief is based on procedural grounds, this court will issue a COA “when the prisoner shows, at least, that jurists of reason would find it debatable whether the [motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Atkins fails to make the requisite showing. *See id.* Accordingly, his motions for a COA are DENIED. His motions to review a sentence are likewise DENIED.

To the extent that Atkins’s COA pleadings can liberally be construed as alternatively moving for authorization to file successive § 2255 motions, those motions are DENIED as Atkins fails to make a prima facie showing that he satisfies the requisite criteria for obtaining authorization to file a successive § 2255 motion. *See* 28 U.S.C. § 2255(h).

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and No. 24-10927

In light of Atkins's history of filing pleadings raising the same claims, he is WARNED that the further filing of repetitive and frivolous pleadings attacking his revocation judgment or sentence may result in the imposition of sanctions, including dismissal, monetary sanctions, and limits on his ability to file pleadings in this court and any court subject to this court's jurisdiction.

United States Court of Appeals
for the Fifth Circuit

No. 23-11003
AND
No. 23-11006

United States Court of Appeals
Fifth Circuit

FILED

March 18, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOHN LOUIS ATKINS,

Defendant—Appellant.

Applications for Certificate of Appealability
the United States District Court
for the Northern District of Texas
USDC Nos. 1:15-CR-52-1, 1:23-CV-186
USDC Nos. 1:15-CR-53-1, 1:23-CV-187

UNPUBLISHED ORDER

Before ELROD, HAYNES, and DOUGLAS, *Circuit Judges.*

PER CURIAM:

John Lewis Atkins, former federal prisoner # 11028-091 and current Texas prisoner # 2184778, moves for certificates of appealability (COA) to appeal the dismissal of his two Federal Rule of Civil Procedure 60(b) motions, respectively seeking relief from the denial of his two 28 U.S.C.

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and No. 23-11006

§ 2255 motions wherein he challenged the district court's judgments revoking his supervised release based on its finding that he had possessed a firearm. Because the applications set forth identical arguments, the court CONSOLIDATES them sua sponte.

As a preliminary matter, Atkins raises the following arguments for the first time in his COA pleadings: (i) he is actually innocent of possessing a firearm; (ii) his revocation judgments violated the Double Jeopardy Clause; (iii) the Government never proved at his revocation hearing the requisite knowledge element as articulated in *Rehaif v. United States*, 139 S. Ct. 2191 (2019); and (iv) the Government violated *Brady v. Maryland*, 373 U.S. 83 (1963), by withholding a police report. As such, this court lacks jurisdiction to consider them. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018).

Otherwise, Atkins's Rule 60(b) motions were unauthorized successive § 2255 motions over which the district court lacked jurisdiction. *See Gonzalez v. Crosby*, 545 U.S. 524, 530-32 (2005); *United States v. Vialva*, 904 F.3d 356, 360 (2018); § 2255(h). Consequently, the issues presented do not deserve encouragement to proceed, and the motions for a COA are DENIED. *See Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

To the extent that Atkins's COA pleadings can liberally be construed as alternatively moving for authorization to file successive § 2255 motions, those motions are DENIED as Atkins fails to make a prima facie showing that he satisfies the requisite criteria for obtaining authorization to file a successive § 2255 motion. *See* § 2255(h).

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 11, 2022

Lyle W. Cayce
Clerk

No. 21-40694
Summary Calendar

JOHN LOUIS ATKINS,

Plaintiff—Appellant,

versus

UNITED STATES DEPARTMENT OF JUSTICE - F.B.O.P.,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:20-CV-300

Before KING, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:*

John Louis Atkins, federal prisoner #11028-091 and Texas prisoner #2184778, appeals the dismissal of his 28 U.S.C. § 2241 petition in which he sought to challenge the revocation of his terms of supervised release and the revocation sentences imposed for his prior convictions of being a felon in

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

Appendix "E," page 1

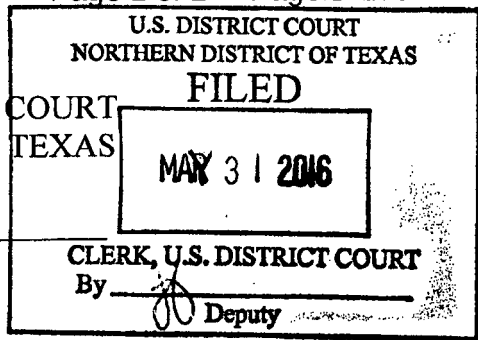
possession of a firearm and passing counterfeit obligations of the United States. He challenges the denial of his motion to amend his § 2241 petition and the district court's dismissal of the petition without addressing the merits of his actual innocence and time computation claims.

On Atkins's motion, the district court for the Northern District of Texas transferred the petition to the Eastern District of Texas and denied Atkins's motion to amend his petition without prejudice. Following the transfer, the Eastern District of Texas granted Atkins's motion to amend his petition. Thus, his complaints that he was not permitted to amend his petition are meritless.

Atkins's claim of actual innocence is a collateral attack on the revocation judgment, which is properly construed as arising under 28 U.S.C. § 2255. *Padilla v. United States*, 416 F.3d 424, 426 (5th Cir. 2005). He has not demonstrated that § 2255 is inadequate or ineffective to test the legality of his detention. *See* § 2255(e); *Reyes-Requena v. United States*, 243 F.3d 893, 901 (5th Cir. 2001). As such, the § 2241 petition was properly dismissed because the district court lacked jurisdiction to consider any claims arising under § 2255. *See Pack v. Yusuff*, 218 F.3d 448, 451-52 (5th Cir. 2000).

Atkins's amended petition, which did not include or reincorporate his time computation argument, superseded his earlier petition. *See King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994). Atkins did not re-urge his time computation claims in his reply to the Government's response or in his objections to the magistrate judge's report and recommendation. Thus, his assertions of error in the disposition of these claims are without merit.

AFFIRMED.



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

UNITED STATES OF AMERICA

v.

JOHN LOUIS ATKINS

No. 1:15-CR-055-O

VERDICT OF THE JURY

COUNT ONE:

We, the Jury, find the defendant, **John Louis Atkins,**

- Guilty
- Not Guilty

as to Count One of the Indictment.

 FOREPERSON