

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

April 18, 2008

FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

In re:

WARD LARAY PRICE,

Movant.

No. 08-5017
(D.C. No. 89-CR-91-HDC)
(N.D. Okla.)

ORDER

Before **KELLY, BRISCOE, and TYMKOVICH**, Circuit Judges.

Ward Laray Price, a federal prisoner appearing pro se, has filed a motion for remand relating to his fourth attempt to file an unauthorized second or successive 28 U.S.C. § 2255 motion in district court. We deny the motion and warn Price that he may be subject to sanctions if he again seeks to file an unauthorized second or successive § 2255 motion.

In October 2007, Price filed a motion in district court, captioned as filed pursuant to 28 U.S.C. § 1651, that sought relief from his 1989 drug convictions and sentence. Price sought to raise claims that the charging language of his indictment was ambiguous, and that the district court violated his constitutional rights by imposing a mandatory minimum sentence because the relevant drug quantity was not proven beyond a reasonable doubt. Because the motion

challenges the validity and constitutionality of Price's conviction and sentence, it can only be properly construed as a § 2255 motion. *See Carvalho v. Pugh*, 177 F.3d 1177, 1178 (10th Cir. 1999) (holding that the exclusive remedy for testing the validity of a criminal judgment and sentence is that provided for in § 2255, and such remedy is not inadequate or ineffective because a movant is procedurally barred from filing it). Because Price already filed a § 2255 motion challenging his 1989 convictions, he is required to first obtain authorization from this court of appeals before he can file another one. *See* 28 U.S.C. § 2255(h); *id.* § 2244(b)(3). The district court transferred the matter to this court to give Price an opportunity to seek such authorization. *See Coleman v. United States*, 106 F.3d 339, 341 (10th Cir. 1997) (per curiam) (permitting district courts to transfer unauthorized second or successive petitions to the circuit court under 28 U.S.C. § 1631 if it is in the interest of justice to do so).

Rather than seek authorization, Price filed a motion asking us to remand the matter back to the district court so it can rule on his October 2007 motion. He argues that he does not need authorization to file a writ of coram nobis pursuant to § 1651. Price knows, however, that this is a frivolous argument.

On three prior occasions, Price has filed motions in district court, that, notwithstanding his assortment of captions, were unauthorized second or successive § 2255 motions. *See In re Price*, No. 07-5085, slip. op. at 1-3 (10th Cir. Aug. 23, 2007) (denying Price's third motion for authorization and

describing his prior attempts to file unauthorized second or successive § 2255 motions). The district court and this court have repeatedly explained to Price that, regardless of the title he puts on the caption of his motion, any post-judgment claim that asserts or reasserts a substantive challenge to a federal prisoner's conviction or sentence filed after a first § 2255 motion has been filed, may not be filed in district court unless and until it is first "certified . . . by a panel of the appropriate court of appeals to contain . . . newly discovered evidence . . . or . . . a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." § 2255(h); *see also United States v. Nelson*, 465 F.3d 1145, 1149 (10th Cir. 2006) ("It is the relief sought, not [the] pleading's title, that determines whether the pleading is a § 2255 motion."). Price's last attempt to evade authorization requirements, in May 2007, was to characterize his motion as a writ of coram nobis, *see In re Price*, No. 07-5085, slip op. at 3, as he does again in this attempt. In short, Price knows full well that he cannot file any post-judgment motion in district court that seeks relief from his conviction or sentence, even if he calls it a writ of coram nobis, *see Nelson*, 465 F.3d at 1149, without first seeking authorization from this court of appeals, *see* § 2244(b)(3), by demonstrating that his proposed claims meet the standards set forth in § 2255(h).

Price has not sought such authorization, nor does he assert or demonstrate that his claims meet the § 2255(h) standards. He therefore is prohibited from

filing his proposed motion in the district court. Thus, there is no basis for remanding the matter to the district court. We warn Price that any further effort by him to begin a collateral attack on his 1989 convictions without first satisfying all of the authorization requirements set forth in § 2255(h), including first moving in this court for such authorization, could lead to the imposition of sanctions.

Accordingly, the motion for remand and the motion for stay are DENIED, and the matter is TERMINATED.

Entered for the Court

ELISABETH A. SHUMAKER, Clerk