

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7806

KENNI RAYMON ALONZO,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. John T. Copenhaver, Jr., District Judge. (2:09-cv-00745; 2:00-cr-00130-1)

Submitted: January 27, 2010

Decided: March 5, 2010

Before NIEMEYER, MOTZ, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Kenni Raymon Alonzo, Appellant Pro Se. Samuel D. Marsh, Assistant United States Attorney, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kenni Raymon Alonzo appeals the district court's order denying his petition for a writ of audita querela, in which he alleged that the Government failed to file an information under 18 U.S.C. § 851 (2006) prior to sentencing him as a career offender under U.S. Sentencing Guidelines Manual § 4B1.1 (2000). We have reviewed the record and find no reversible error.

Although the district court addressed Alonzo's claim on the merits, we find that the petition was tantamount to a successive, unauthorized motion under 28 U.S.C.A. § 2255 (West Supp. 2009), over which the district court lacked jurisdiction.* The fact that Alonzo cannot proceed under § 2255 unless he obtains authorization from this court to file a successive motion does not alter our conclusion. See Carrington v. United States, 503 F.3d 888, 890 (9th Cir. 2007) ("[T]he statutory limits on second or successive habeas petitions do not create a 'gap' in the post-conviction landscape that can be filled with the common law writs."); United States v. Torres, 282 F.3d 1241, 1245 (10th Cir. 2002) ("[A] writ of audita querela is not available to a petitioner when other remedies exist, such as a

* Were this court to review the merits of Alonzo's petition, we would fully concur with the reasoning of the district court and would affirm on that basis.

motion to vacate sentence under 28 U.S.C.[A.] § 2255." (internal quotation marks omitted)).

Accordingly, we affirm the denial of relief. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED