

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-10861

United States Court of Appeals
Fifth Circuit

FILED

December 12, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

KRISTOPHER RAY FACIO,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:17-CR-29-1

Before SOUTHWICK, HAYNES, and HO, Circuit Judges,

PER CURIAM:*

Kristopher Ray Facio, federal prisoner # 55400-177, moves for leave to proceed in forma pauperis in this purported appeal of the 480-month sentence imposed following his guilty plea conviction for attempting to coerce or entice a minor into engaging in illegal sexual activity. However, in June 2018, this court dismissed Facio's direct appeal of his conviction and sentence as frivolous. *United States v. Facio*, 728 F. App'x 318, 318 (5th Cir. 2018). Facio's attempt to challenge his sentence for a second time is without merit and thus

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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frivolous. Accordingly, we DENY his motion for leave to proceed in forma pauperis and DISMISS the appeal as frivolous. *See* 5TH CIR. R. 42.2. Facio's motion for appointment of counsel on appeal is likewise DENIED. Nothing in this opinion impacts Facio's ability to file a 28 U.S.C. § 2255 motion in the district court.