

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-8422

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID ALLEN WILSON,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. James C. Turk, Senior District Judge. (7:08-cv-00520-jct-mfu; 1:95-cr-00006-gmw-1)

Submitted: February 26, 2009

Decided: March 9, 2009

Before WILKINSON, MOTZ, and GREGORY, Circuit Judges.

Affirmed in part; dismissed in part by unpublished per curiam opinion.

David Allen Wilson, Appellant Pro Se. Rick A. Mountcastle, OFFICE OF THE UNITED STATES ATTORNEY, Roanoke, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

David Allen Wilson appeals from a district court order denying his motion for a writ of audita querela, and to the extent Wilson was seeking relief under 28 U.S.C.A. § 2255 (West Supp. 2008), finding the court was without jurisdiction because it was a second or successive motion and Wilson did not have authorization from this court. We affirm in part and dismiss in part.

We have reviewed the district court's order and the record and affirm that part of the order denying relief under the writ of audita querela on the reasoning of the district court. See United States v. Wilson, Nos. 1:95-cr-00006-gmw-1; 7:08-cv-00520-jct-mfu (W.D. Va. Oct. 30, 2008). Insofar as the motion was construed as having been filed under § 2255, we deny a certificate of appealability and dismiss the appeal. 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 IN PART;
DISMISSED IN PART