

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-2350

In re: MARTY LORENZO WRIGHT,

Petitioner.

On Petition for Writ of Audita Querela. (4:95-cr-00039-TEM-
TEM-1)

Submitted: June 30, 2011

Decided: July 5, 2011

Before WILKINSON, DUNCAN, and WYNN, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Marty Lorenzo Wright, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Marty Lorenzo Wright has filed a petition for a writ of audita querela in this court, pursuant to the All Writs Act, 28 U.S.C. § 1651(a) (2006), seeking to challenge the district court's prior dismissal of his Fed. R. Civ. P. 60(b) motion in his underlying 28 U.S.C.A. § 2255 (West Supp. 2010) motion. A writ of audita querela is not available to a petitioner when other avenues of relief are available, such as a motion to vacate under § 2255. United States v. Torres, 282 F.3d 1241, 1245 (10th Cir. 2002); United States v. Johnson, 962 F.2d 579, 582 (7th Cir. 1992) (explaining that audita querela may not be invoked by a defendant challenging the legality of his sentence who could otherwise raise that challenge under § 2255). The fact that Wright cannot proceed under § 2255 unless he obtains authorization from this court to file a successive motion does not alter this conclusion. United States v. Valdez-Pacheco, 237 F.3d 1077, 1080 (9th Cir. 2000) ("We agree with our sister circuits . . . that a federal prisoner may not challenge a conviction or a sentence by way of a petition for a writ of audita querela when that challenge is cognizable under § 2255.").

Accordingly, we deny Wright's pending motion for an evidentiary hearing and his petition for a writ of audita querela. 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.

PETITION DENIED