

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

United States Court of Appeals
Fifth Circuit

FILED

June 23, 2009

No. 08-30842

Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

GLENN WAYNE KELLY

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:01-CR-50061-1

Before REAVLEY, DAVIS, and ELROD, Circuit Judges.

PER CURIAM:*

Glenn Wayne Kelly, federal prisoner # 10984-035, appeals from the district court's order denying his motion for clarification or correction of sentence. In his motion, Kelly challenged the 105-month sentence that he received following his 2001 conviction of possession of a firearm by a convicted felon. Kelly's district court motion was an attempt by Kelly to collaterally attack his sentence by raising errors that occurred at or prior to sentencing. As such, the motion should

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

have been construed by the district court as a 28 U.S.C. § 2255 motion. *See Padilla v. United States*, 416 F.3d 424, 425-26 (5th Cir. 2005); *United States v. Santora*, 711 F.2d 41, 42 and n.1 (5th Cir. 1983). Such a recharacterization of Kelly's motion has important consequences of which Kelly should be apprised. *See Castro v. United States*, 540 U.S. 375, 383 (2003). Also, because Kelly's motion was in the nature of a § 2255 motion, this court lacks jurisdiction over Kelly's appeal absent a certificate of appealability ruling in the district court. *See Muniz v. Johnson*, 114 F.3d 43, 45 (5th Cir. 1997); *United States v. Youngblood*, 116 F.3d 1113, 1114-15 (5th Cir. 1997).

The judgment of the district court is VACATED and this case is REMANDED for further proceedings.