

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

United States Court of Appeals  
Fifth Circuit

**FILED**

May 28, 2010

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 09-20640

Summary Calendar  
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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GERMAN DUQUE,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:90-CR-424-2  
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Before GARZA, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:\*

German Duque, federal prisoner # 54991-079, appeals the district court's summary denial of his challenge to the validity of his indictment, filed pursuant to FED. R. CRIM. P. 12(b)(3)(B). Duque filed this motion after his conviction was affirmed on appeal and the expiration of the time for seeking certiorari. Because the criminal proceedings were no longer pending, this motion was unauthorized and without a jurisdictional basis. *See United States v. Early*, 27 F.3d 140, 142 (5th Cir. 1994). Because Duque was not challenging his sentence, his motion

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

could not be construed as arising under 18 U.S.C. § 3582 or FED. R. CRIM. P. 35. Moreover, it cannot be construed as a 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence because Duque has already filed one § 2255 motion that was addressed on the merits and a new motion would be subject to the jurisdictional bar of 28 U.S.C. § 2244(b)(3)(A). *See United States v. Key*, 205 F.3d 773, 774 (5th Cir. 2000).

Duque has thus “appealed from the denial of a meaningless, unauthorized motion.” *Early*, 27 F.3d at 142. Accordingly, the judgment of the district court denying relief on Duque’s motion is AFFIRMED. *See id.*