

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

United States Court of Appeals  
Fifth Circuit

**FILED**

May 27, 2010

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 09-50923

Summary Calendar  
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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DANA JOHN ALEXANDER,

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 6:09-CV-227  
USDC No. 6:06-CR-62-1  
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Before BENAVIDES, PRADO, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Dana John Alexander, federal prisoner # 56715-180, seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2255 motion as an unauthorized successive motion.

A COA may be granted only if the movant makes a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). When the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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district court denies relief on procedural grounds and does not reach the underlying constitutional claims, “a COA should issue ...[if] the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Although the district court informed Alexander of its recharacterization of a pleading as a § 2255 motion, it did not inform him of the consequences of such recharacterization on subsequent § 2255 motions or provide him with an opportunity to withdraw or amend this motion to include all possible claims. Thus, the recharacterized prior motion does not constitute an initial § 2255 motion that would preclude the filing of another motion as successive. *See Castro v. United States*, 540 U.S. 375, 383-84 (2003).

Accordingly, we GRANT Alexander’s motion to proceed in forma pauperis on appeal, GRANT Alexander a COA on the issue whether the district court erred in denying his § 2255 motion as successive, VACATE the district court’s denial of § 2255 relief, and REMAND to the district court for further consideration. *See Dickinson v. Wainwright*, 626 F.2d 1184, 1186 (5th Cir. 1980).