

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

United States Court of Appeals
Fifth Circuit

FILED

November 30, 2011

Lyle W. Cayce
Clerk

No. 11-20188
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

TOMMY ALEXANDER, SR.,

Defendant-Appellant

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 4:89-CR-331-1

Before KING, JOLLY, and GRAVES, Circuit Judges.

PER CURIAM:*

Tommy Alexander, Sr., federal prisoner # 07193-035, appeals the dismissal of a “Petition and Motion for a Writ of Coram Nobis and/or Audita Querela,” alleging that his conviction was based on an illegal search, fabricated evidence, and prosecutorial misconduct and that relief under the All Writs Act is necessary to correct manifest injustice and fundamental constitutional error. He argues that the district court did not provide adequate reasons for the dismissal and it erred by failing to address the merits of his arguments. The Government has

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 11-20188

moved for dismissal of the appeal, summary affirmance, or an extension of time to brief the merits.

Alexander, who remains incarcerated, is not eligible for coram nobis relief. *See United States v. Esogbue*, 357 F.3d 532, 534 (5th Cir. 2004) Alexander's pleading challenged his federal sentence and is therefore a motion under 28 U.S.C. § 2255. The district court lacked jurisdiction because Alexander has previously filed a § 2255 motion, and we have not authorized him to file a successive motion. *See Hooker v. Sivley*, 187 F.3d 680, 681-82 (5th Cir. 1999). As the appeal is utterly without merit, the motion to dismiss is GRANTED and the appeal is DISMISSED. *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983); *see* 5th Cir. R. 42.2. The Government's alternative motions for summary affirmance or an extension of time to brief the merits are DENIED. We CAUTION Alexander that future frivolous filings may result in the imposition of sanctions.