

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

United States Court of Appeals
Fifth Circuit

FILED

October 19, 2011

Lyle W. Cayce
Clerk

No. 11-30229
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN E. MILTON, III, Also Known as Boo Milton,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Louisiana
No. 3:96-CR-17-1
No. 3:09-CV-987

Before DAVIS, SMITH, and PRADO, Circuit Judges.

PER CURIAM:*

John E. Milton, III, federal prisoner # 24395-034, was convicted of con-

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 11-30229

spiring to possess crack and powder cocaine with intent to distribute. He challenges the denial of a motion that he labeled as arising under Federal Rule of Criminal Procedure 36. His request for a certificate of appealability is DENIED as unnecessary, because he is not challenging “the final order in a proceeding under” 28 U.S.C. § 2255. *See* 28 U.S.C. § 2253(c)(1)(B).

In his filing with this court, Milton contends that relief under Rule 36 is proper because his arguments concerning the district court’s alleged failure to comply with certain portions of Federal Rule of Criminal Procedure 32 relate to ministerial matters. We disagree and discern no error in the district court’s holding that Milton’s motion, which raised a claim that did not pertain to a clerical matter and that could have been presented earlier, was an unauthorized successive § 2255 motion. *See United States v. Orozco-Ramirez*, 211 F.3d 862, 867 (5th Cir. 2000); *United States v. Key*, 205 F.3d 773, 774 (5th Cir. 2000); 28 U.S.C. § 2255(h).

The judgment is AFFIRMED, and Milton’s motion to proceed *in forma pauperis* is DENIED.