

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

\_\_\_\_\_  
No. 14-10762  
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United States Court of Appeals  
Fifth Circuit

**FILED**

November 10, 2015

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOHN RAY CHEEK,

Defendant-Appellant

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Appeals from the United States District Court  
for the Northern District of Texas  
USDC No. 3:14-CV-1308  
USDC No. 3:11-CR-157-1  
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Before DAVIS, JONES, and HAYNES, Circuit Judges.

PER CURIAM:\*

John Ray Cheek, federal prisoner # 42969-177, seeks a certificate of appealability (COA) to challenge the district court's order transferring his 28 U.S.C. § 2255 motion to this court as an unauthorized second or successive § 2255 motion. The clerk of court docketed the transfer order itself under 14-10741 and directed Cheek to file an application for authorization to file a

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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successive habeas petition. When he failed to do so, that action was dismissed. This appeal, then, is from the transfer order itself.

The transfer of an unauthorized § 2255 motion is not a final order under 28 U.S.C. § 2253(c)(1)(B). *See United States v. Fulton*, 780 F.3d 683, 688 (5th Cir. 2015), *cert. denied*, 2015 WL 5772739 (Nov. 2, 2015) (No. 15-6348). Therefore, “the appeal of such an order does not require a COA.” *Id.* In addition, the record reflects that the claims asserted by Cheek were, or could have been raised, in his first § 2255 motion. *See Crone v. Cockrell*, 324 F.3d 833, 837 (5th Cir. 2003). Cheek has failed to show that the district court erred by concluding that it lacked jurisdiction to decide Cheek’s application without permission from this court and by transferring the motion to this court.

Accordingly, Cheek’s motion for a COA is DENIED as unnecessary. The district court correctly transferred the application to this court and that order is AFFIRMED; the transferred application has already been dismissed. Thus, no further action is available in this appeal.