

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

United States Court of Appeals
Fifth Circuit

FILED

January 17, 2017

Lyle W. Cayce
Clerk

No. 15-10835
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MELVIN WIAND,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:15-CV-1843
USDC No. 3:07-CR-352-1

Before KING, DENNIS, and COSTA, Circuit Judges.

PER CURIAM:*

Melvin Wiand, federal prisoner # 37221-177, has appealed the district court's order construing his motion invoking Rule 60(b) of the Federal Rules of Civil Procedure as a second or successive motion under 28 U.S.C. § 2255 and transferring the matter to this court for further proceedings. Wiand asserts that his conviction resulted from a "forged and fabricated" consent-to-search

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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form and that his attorney rendered ineffective assistance in failing to challenge the form at the suppression hearing. Because these claims were raised and rejected in a prior § 2255 proceeding, they are successive. *See Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005).

Wiand has not obtained this court's leave to file a second or successive § 2255 motion. *See* § 2255(h). Accordingly, the motion was unauthorized, and the district court lacked jurisdiction. *See In re Sepulvado*, 707 F.3d 550, 556 (5th Cir. 2013). The appeal is DISMISSED AS FRIVOLOUS. *See* 5TH CIR. R. 42.2. Wiand is WARNED that frivolous, repetitive, or otherwise abusive filings will invite the imposition of sanctions, including dismissal, monetary sanctions, and restrictions on his ability to file pleadings in this court and any court subject to this court's jurisdiction.