

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

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No. 16-10348  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit  
**FILED**  
November 21, 2016  
Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FREDERICK ODHIAMBO OPIYO,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:10-CR-181-1

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Before HIGGINBOTHAM, PRADO, and HAYNES, Circuit Judges.

PER CURIAM:\*

Frederick O. Opiyo, federal prisoner # 39194-039, appeals the district court's dismissal of his Federal Rule of Civil Procedure Rule 60(d) motion challenging the revocation of his supervised release which resulted in a sentence of 24 months of imprisonment. Rule 60 does not provide a jurisdictional basis for relief from a criminal judgment. *See United States v. Early*, 27 F.3d 140, 142 (5th Cir. 1994). To the extent that Opiyo's motion may

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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be deemed as a challenge to the result of his prior 28 U.S.C. § 2255 proceeding, it is a second or successive § 2255 motion. *See United States v. Rich*, 141 F.3d 550, 551-53 (5th Cir. 1998). Opiyo has not obtained authorization to file such a motion, which we would deny because his claims do not satisfy the standard for a successive motion. *See* 28 U.S.C. § 2255(h).

Although the district court denied Opiyo's motion on the merits, the district court should have denied the motion for lack of jurisdiction. *See Early*, 27 F.3d at 142. We can, and therefore do, AFFIRM on the alternative basis that the district court lacked jurisdiction over the unauthorized motion. *See id.*