

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

No. 16-11398

United States Court of Appeals
Fifth Circuit

FILED

August 21, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HOMERO MARTINEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:15-CV-544
USDC No. 4:12-CR-209-1

Before DAVIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Homero Martinez, federal prisoner # 45120-177, moves for a certificate of appealability (COA) to appeal the denial of his motion to amend his 28 U.S.C. § 2255 motion, which had been denied approximately ten months earlier. As Martinez is not seeking to appeal from the final order in a habeas proceeding, he does not need a COA. *See* 28 U.S.C. § 2253(c)(1). A COA is therefore DENIED as unnecessary. *See id.*

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Once a final judgment has been entered, a plaintiff may seek to amend only by appealing or by seeking to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59 or 60. *See, e.g., Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 864 (5th Cir. 2003). Martinez’s motion to amend pursuant to Federal Rule of Civil Procedure 15, which was filed well after the entry of the final judgment denying his § 2255 motion, was a “meaningless, unauthorized motion” over which the district court lacked jurisdiction. *See United States v. Early*, 27 F.3d 140, 142 (5th Cir. 1994). Because Martinez has appealed from the denial of unauthorized motion, we AFFIRM the district court’s ruling.