

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

\_\_\_\_\_  
No. 17-10226  
\_\_\_\_\_

United States Court of Appeals  
Fifth Circuit

**FILED**

September 6, 2018

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOHN RAY CHEEK,

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:16-CV-1514  
\_\_\_\_\_

Before DENNIS, GRAVES, and COSTA, Circuit Judges.

PER CURIAM:\*

John Ray Cheek, federal prisoner # 42969-177, filed a pleading that was labeled as requesting review of sentence under 18 U.S.C. § 3472(e)(3)(A),(B)(i) but was docketed as a notice of appeal. The district court denied him a certificate of appealability (COA), and he now seeks both a COA and authorization to proceed in forma pauperis (IFP) from this court.

Liberally construed, we will treat Cheek's filing as a motion for authorization to file a successive § 2255 petition. *See* 28 U.S.C. §§ 2255(h),

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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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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2244(b)(3)(A). This court may authorize the filing of a second or successive § 2255 motion only if the movant makes a prima facie showing that his claims rely on either:

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

§ 2255(h); *see also* § 2244(b)(3)(C).

However, Cheek fails to make the necessary showing to file a successive petition under § 2255(h). Accordingly, Cheek's COA motion is DENIED. Further, Cheek's IFP motion is DENIED as moot.