

Panel rehearing granted by
opinion issued 7/30/01

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 00-7525

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

PATRICE BEHANZIN WILSON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. W. Earl Britt, Senior District Judge. (CR-96-34-5-BR, CA-00-229-5-BR)

Submitted: April 27, 2001

Decided: May 23, 2001

Before WIDENER, MICHAEL, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Patrice Behanzin Wilson, Appellant Pro Se. Robert Edward Skiver, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Patrice Behanzin Wilson seeks to appeal the district court's order denying his motion to waive or defer his criminal fine and construing his Fed. R. Civ. P. 60(b) motion attacking his criminal conviction as a motion filed under 28 U.S.C.A. § 2255 (West Supp. 2000) and denying the same. We have reviewed the record and the district court's opinion and find no reversible error in either the district court's construal of the Rule 60(b) motion as a § 2255 motion or its subsequent denial of that motion. Accordingly, we deny a certificate of appealability and dismiss as to that claim on the reasoning of the district court. United States v. Wilson, Nos. CR-96-34-5-BR; CA-00-229-5-BR (E.D.N.C. Sept. 13, 2000).

Addressing Wilson's motion to waive or defer his criminal fine, we note that Wilson failed to raise this claim on direct appeal and has not demonstrated cause and prejudice for this failure. Accordingly, we find the claim waived. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED