

ON PETITION FOR REHEARING

UNPUBLISHED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: July 17, 2001

Decided: July 30, 2001

Before WIDENER, MICHAEL, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.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Unpublished opinions are not binding precedent in this circuit.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 Wilson petitions this Court for rehearing and rehearing en banc on the ground that this Court's decision in United States v. Wilson, No. 00-7525 (4th Cir. May 23, 2001), reviewed matters decided by the district court in an order issued in September 13, 2000, which the district court later abrogated in an order entered on December 22, 2000. We grant Wilson's petition for rehearing and modify our May 23, 2001, decision to rescind our conclusion that the district court properly construed Wilson's motion for reconsideration as a motion filed pursuant to 28 U.S.C.A. § 2255 (West Supp. 2000). Prior to the issuance of our decision, the district court granted in part Wilson's motion for reconsideration on the ground that his Fed. R. Civ. P. 60(b) motion should not have been construed as a motion under § 2255. The district court ultimately denied Wilson's Rule 60(b) motion on the ground that Rule 60(b) cannot be used to collaterally attack a criminal judgment. See United States v. Mosavi, 138 F.3d 1365, 1366 (11th Cir. 1998). We affirm the district court's construction of Wilson's motion and the subsequent denial of that motion on the reasoning contained in the district court's December 22, 2000, order. See Wilson v. United States, No. 7:96-CR-34-BR1 (E.D.N.C. Dec. 22, 2000).

AFFIRMED