

UNPUBLISHED

**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA, <i>Plaintiff-Appellee,</i>
v.
JAMES EDWARD ELLERBE, <i>Defendant-Appellant.</i>

No. 02-6213

Appeal from the United States District Court  
for the Eastern District of North Carolina, at Raleigh.  
W. Earl Britt, Senior District Judge.  
(CR-97-100-BR)

Submitted: April 18, 2002

Decided: May 3, 2002

Before MOTZ, TRAXLER, and GREGORY, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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**COUNSEL**

James Edward Ellerbe, Appellant Pro Se. John Samuel Bowler, Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.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

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**OPINION**

## PER CURIAM:

James Edward Ellerbe appeals the district court's orders denying his motion for a court order and denying reconsideration. Ellerbe's motion relates to his conviction for aiding and abetting a conspiracy to possess with intent to distribute and distribution of cocaine base in violation of 18 U.S.C. § 2 (1994) and 21 U.S.C.A. §§ 841(a)(1), 846 (West 1999 & Supp. 2001), which we affirmed on direct appeal. *See United States v. Ellerbe*, No. 98-4058, 1999 WL 64289 (4th Cir. Feb. 11, 1999) (unpublished).

The proper basis to seek to invalidate a conviction is a motion pursuant to 28 U.S.C.A. § 2255 (West 1994 & Supp. 2001). Because Ellerbe has previously filed a motion seeking relief under § 2255, *see United States v. Ellerbe*, No. 00-7472, 2000 WL 1862099 (4th Cir. Dec. 20, 2000) (unpublished), however, he must seek authorization from this Court under 28 U.S.C.A. § 2244 (West 1994 & Supp. 2001) prior to filing a successive motion under § 2255. Because Ellerbe has not sought this authorization, and counsel stated that Ellerbe had already received a complete copy of the documents he sought in the present motion, the district court properly denied his motion.

Accordingly, we deny Ellerbe's several motions for appointment of counsel on appeal and affirm the orders of the district court. 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.

*AFFIRMED*