

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 98-7320

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

BOBBY JOE MCKNIGHT,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at New Bern. W. Earl Britt, Senior District Judge. (CR-96-20-BR)

Submitted: November 5, 1998

Decided: November 23, 1998

Before ERVIN, LUTTIG, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Bobby Joe McKnight, Appellant Pro Se. Anne Margaret Hayes, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.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

PER CURIAM:

Bobby Joe McKnight seeks to appeal the district court's order denying his petition for a Writ of Coram Nobis under the All Writs Act and his motion for reconsideration of the same. We construe this petition as a motion under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998), deny a certificate of appealability, and dismiss.

In November 1996, subsequent to the enactment of the Anti-terrorism and Effective Death Penalty Act, McKnight filed a § 2255 motion in the district court. Following the district court's denial of this motion, and this court's dismissal of his appeal, McKnight moved in this court for leave to file a subsequent § 2255 motion under 28 U.S.C.A. § 2244 (West 1994 & Supp. 1998). We denied this motion for failure to show either newly discovered evidence or a new rule of constitutional law made retroactive by the Supreme Court in accordance with the requirements of § 2255. In his present action, McKnight concedes that he is proceeding under the All Writs Act because a subsequent § 2255 motion is unavailable to him.

Reviewing the record, we conclude that McKnight's present petition clearly sounds under § 2255 and that he could have brought his claim in his prior § 2255 motion. Accordingly, we construe his petition as a motion under § 2255 and hold that it was properly denied. Likewise, because McKnight's motion for reconsideration raises no error, but simply takes issue with the district court's failure to expound upon its reasoning, we find that it too was

properly denied. We therefore deny a certificate of appealability and dismiss. 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