

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-10901

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RONNIE JOHNSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:95-CV-3039-R

June 10, 1998

Before HIGGINBOTHAM, WIENER and BENAVIDES, Circuit Judges.

PER CURIAM:*

Ronnie Johnson, federal prisoner #23091-077, moves for recall of the mandate following the denial of his constructive motion for a certificate of appealability ("COA") to appeal from the denial of his motion for relief under 28 U.S.C. § 2255. Johnson correctly contends that the COA requirement of the Antiterrorism and Effective Death Penalty Act (AEDPA) should not have been applied to his case. See Lindh v. Murphy, 117 S. Ct. 2059 (1997). We construe Johnson's motion as seeking panel review of a single-judge action pursuant to Fed. R. App. P.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

27(c). Johnson's motion for panel review is GRANTED, and the order denying Johnson a COA is RESCINDED.

No further briefing is necessary for the resolution of Johnson's § 2255 appeal, and we proceed to consider its merits. See Dickinson v. Wainwright, 626 F.2d 1184, 1186 (5th Cir. 1980). Johnson contends that his criminal prosecution was barred under the doctrines of res judicata and double jeopardy. These issues are foreclosed by the Supreme Court's opinion in United States v. Ursery, 116 S. Ct. 2135, 2149 (1996).

We conclude that Johnson's appeal is without arguable merit and is frivolous. It is therefore dismissed. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

MOTION FOR PANEL REVIEW GRANTED; ORDER DENYING COA RESCINDED; APPEAL DISMISSED. 5th Cir. R. 42.2.