

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-3377

Leslie Isben Rogge,

Appellant,

v.

United States of America,

Appellee.

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Appeal from the United States
District Court for the
Western District of Arkansas.

[UNPUBLISHED]

Submitted: August 22, 2002

Filed: August 27, 2002

Before BOWMAN, LOKEN, and MURPHY, Circuit Judges.

PER CURIAM.

Leslie Isben Rogge appeals the District Court's¹ order dismissing his 28 U.S.C. § 2255 motion, which he filed in 2001, more than three years after his conviction became final. On appeal, Rogge argues the District Court erred in finding his § 2255 motion was successive and unauthorized because his prior filing was found to be a

¹The Honorable Harry F. Barnes, United States District Judge for the Western District of Arkansas, adopting the report and recommendations of the Honorable Bobby E. Shepherd, United States Magistrate Judge for the Western District of Arkansas.

misabeled 28 U.S.C. § 2241 petition. He argues he is entitled to relief on his motion because a defect in the indictment deprived the District Court of federal jurisdiction, and his trial counsel was ineffective.

We need not reach the more complicated issue of successiveness because the record plainly demonstrates that Rogge’s motion was filed well beyond the one-year limitations period, see 28 U.S.C. § 2255, with no applicable exception, see United States v. Cotton, 122 S. Ct. 1781, 1785 (2002) (“[D]efects in an indictment do not deprive a court of its power to adjudicate a case.”).

Accordingly, we affirm the judgment dismissing Rogge’s motion.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.