

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 03-2804

United States of America,

Appellee,

v.

Angel Herrera-Zaragosa,

Appellant.

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* Appeal from the United States
* District Court for the
* Eastern District of Missouri.
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* [UNPUBLISHED]
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Submitted: November 6, 2003

Filed: January 12, 2004

Before MELLOY, HANSEN, and SMITH, Circuit Judges.

PER CURIAM.

Angel Herrera-Zaragosa appeals the district court's¹ order denying both his motion for permission to file a 28 U.S.C. § 2255 motion out of time and his request for transcripts and other court documents. Petitioner does not need authorization to file a section 2255 motion because he has not yet filed an initial section 2255 motion. Cf. Walker v. Roth, 133 F.3d 454, 455 (7th Cir. 1997) (prior approval mechanism of § 2244 inapplicable to first habeas petitions). Neither the district court nor this court

¹ The Honorable Catherine D. Perry, United States District Judge for the Eastern District of Missouri.

has authority to permit the filing of a section 2255 motion out of time. We also note that petitioner is not entitled to transcript copies prior to filing a section 2255 motion. See Chapman v. United States, 55 F.3d 390, 391 (8th Cir. 1995) (habeas petitioner not entitled to copies of transcripts at government expense in advance of filing § 2255 motion).

Accordingly, we affirm the district court's order, but modify the order to be without prejudice to appellant's filing, after the entry of this order, an initial section 2255 motion in the district court. Nothing in this order shall be construed as determining whether any section 2255 motion hereafter filed by petitioner in the district court has been timely filed. See 8th Cir. R. 47A(a).

Herrera-Zaragosa has also filed in this court a motion to proceed in forma pauperis (IFP). However, that motion bears the caption of the United States District Court for the Eastern District of Missouri and seeks leave to proceed in a civil rights case in that court, rather than on appeal in this court. The clerk of this court is directed to forward the IFP application to the district court for its consideration.
