

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 05-2955

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United States of America,

Appellee,

v.

Matthew Glynn Arlen Hayes,

Appellant.

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

[UNPUBLISHED]

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Submitted: June 21, 2007

Filed: June 27, 2007

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Before COLLOTON, BEAM, and BENTON, Circuit Judges.

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PER CURIAM.

Matthew Hayes appeals the district court's<sup>1</sup> denial of his motion to modify his sentence under 18 U.S.C. § 3582(c)(2), or to issue a new commitment order directing the Bureau of Prisons to comply with the terms of one of the alternative sentences imposed by the district court prior to *United States v. Booker*, 543 U.S. 220 (2005). After filing this appeal, Hayes filed a 28 U.S.C. § 2255 motion in the district court, arguing that his counsel had ignored his request to pursue a direct appeal of his sentence. The district court granted the motion to vacate the judgment and

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<sup>1</sup>The Honorable Susan Webber Wright, United States District Judge for the Eastern District of Arkansas.

resentenced Hayes. Accordingly, we find this appeal is moot, as the instant motion sought to enforce or modify a judgment that has since been vacated. *See Mills v. Green*, 159 U.S. 651, 653 (1895) (when event occurs during pendency of appeal that renders it impossible for court – if it should decide case in favor of plaintiff – to grant effective relief, court will dismiss appeal as moot). We therefore dismiss the appeal.

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