

**United States Court of Appeals**  
**For the Seventh Circuit**  
**Chicago, Illinois 60604**

Submitted June 26, 2024\*  
Decided June 27, 2024

**Before**

FRANK H. EASTERBROOK, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 24-1515

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

*v.*

ANDREW J. JOHNSTON,  
*Defendant-Appellant.*

Appeal from the United States  
District Court for the Northern  
District of Illinois, Eastern Division.

No. 1:17-cr-00517

Rebecca R. Pallmeyer,  
*Chief Judge.*

**ORDER**

Andrew Johnston has filed a multitude of post-judgment motions in his criminal case. Last year we warned him that further frivolous motions would lead to an order under *Alexander v. United States*, 121 F.3d 312 (7th Cir. 1997). See *United States v. Johnston*, No. 23-2792 (7th Cir. Nov. 27, 2023).

The warning was ineffectual. Johnston is back with another appeal, this time contending that he is entitled to relief under Fed. R. Civ. P. 60(b) because he has evidence justifying a new trial. A similar motion was filed in 2022, under Fed. R. Crim.

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\* This successive appeal has been submitted to the original panel under Operating Procedure 6(b). We have unanimously agreed to decide this case without argument because the brief and record adequately present the facts and legal arguments, and argument would not significantly aid the court. See Fed. R. App. P. 34(a)(2)(C).

P. 33, and denied. Related arguments also were advanced in an unsuccessful collateral attack under 28 U.S.C. §2255. The three-year time limit under Rule 33 has expired, as we informed Johnston last November, but this did not deter him from citing a different rule in support of the same arguments. The district court denied his motion in a brief order.

We do not address the merits of this motion. It is a disguised collateral attack on the judgment, which goes nowhere because Johnston has not received (or for that matter sought) this court's permission. See 28 U.S.C. §2255(h), incorporating 28 U.S.C. §2244. Criminal Rule 33 provides an alternative to §2255 in some situations, but that rule is no longer available to Johnston. Civil Rule 60 is not a means to evade limits on Criminal Rule 33 or collateral review. See *Gonzalez v. Crosby*, 545 U.S. 524 (2005). The district court was obliged to deny the motion, as it did.

Because Johnston did not heed our warning, we now fine him \$1,000. Until the fine is paid, this court will treat any further post-judgment appeals in this criminal case as summarily affirmed on the 30th day after filing. The district court likewise may choose to deem Johnston's motions denied without the need for an explanation. He has received quite enough judicial attention to these frivolous motions.

Any request for permission to file a successive collateral attack will be distributed to this panel for review, and a non-frivolous request will be addressed on the merits. We stress "non-frivolous". A frivolous request will be deemed denied on the 30th day under the *Alexander* procedure.