

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10085-F

SAMUEL KNOWLES,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

**Appeal from the United States District Court
for the Southern District of Florida**

ORDER:

Samuel Knowles's motion for a certificate of appealability is DENIED because he has failed to show that reasonable jurists would find debatable both the merits of the underlying claims, and the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

/s/ Gerald B. Tjoflat
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-425-CR-COHN

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAMUEL KNOWLES,

Defendant.

ORDER DENYING DEFENDANT'S RULE 60(b) MOTION

THIS CAUSE is before the Court on Defendant Samuel Knowles' "Motion Filed Under Fed. R. of Civ. Rule 60(b) for Relief From Final Judgment Order Denying 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct Sentence" ("Motion") [DE 361]. The Court has considered the Motion and is otherwise advised in the premises.

This case has a lengthy history which has been detailed in the Court's prior Orders and need not be repeated here. In Defendant's latest Motion, he seeks reinstatement of his § 2255 Petition pursuant to Rule 60(b)¹ based on his contention that his post-conviction counsel "was deprived of the record" during the adjudication of Defendant's § 2255 Petition and was therefore "unable to present[] an accurate course of events." DE 361 at 1, 3. Defendant also asserts that Magistrate Judge Seltzer's Report and Recommendation ("Report") regarding Defendant's § 2255 Petition contained false information. Id. at 3. Both the allegedly false information contained in the Report and the allegedly inaccurate information presented by Defendant's post-

¹ Defendant does not specify which subsection of Rule 60(b) he relies upon.

conviction counsel concern the specific date that Defendant was transported to the United States in 2006.

Federal Rule of Civil Procedure 60(b) provides that:

On Motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

As an initial matter, Defendant's Motion is untimely. Federal Rule of Civil Procedure 60(c)(1) provides that motions under Rule 60(b) "must be made within a reasonable time – and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Over five years have elapsed between entry of the Court's order denying Defendant's § 2255 Petition and the filing of the instant Motion. Thus, to the extent the Motion is based on reasons (1), (2), or (3), it is clearly time barred. The Motion is also untimely under the remaining Rule 60(b) subsections because it was not made within a "reasonable time."

“What constitutes a reasonable time depends on the circumstances of each case, including ‘whether the parties have been prejudiced by the delay and whether a good reason has been presented for failing to take action sooner.’” Gill v. Wells, 610 Fed. Appx. 809, 812 (11th Cir. 2015) (quoting BUC Int’l Corp. v. Int’l Yacht Council Ltd., 517 F.3d 1271, 1275 (11th Cir. 2008)). Defendant has not presented any reason why he has failed to take action sooner, nor does it appear that a good reason could possibly exist to justify Defendant waiting over five years to seek to correct alleged factual inaccuracies that would have been immediately obvious to Defendant. Defendant cites his post-conviction counsel’s inability to prove the allegation in Defendant’s § 2255 Petition that he “was not transported to the United States on September 1, 2006.” DE 361 at 1. But Defendant’s counsel’s failure to prove this allegation, whether due to an inability to access the entire record below or not, was apparent when Judge Seltzer issued his Report **on March 21, 2012** containing the statement “[o]n September 1, 2006, Movant was transported to the United States.” DE-Cv 18 at 4 (emphasis added).² Defendant was thus on notice of this alleged inaccuracy over five years ago, and it was unreasonable for him to fail to take action sooner.

Even if Plaintiff’s Motion were timely, Defendant has failed to show that he is entitled to the relief requested. As noted above, Defendant does not specify which Rule 60(b) subsection he relies on, but Defendant’s only possible ground for relief appears to be Rule 60(b)(6). However, “a movant seeking relief under Rule 60(b)(6) [must] show ‘extraordinary circumstances’ justifying the reopening of a final judgment.” Gonzalez v. Crosby, 545 U.S. 524, 535 (2005). “Rule 60(b) motions are directed to the sound

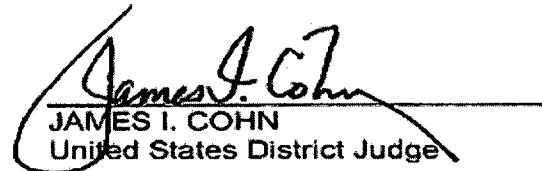
² “DE-Cv” citations refer to docket entries in the related civil proceedings, Case No. 11-23943-CIV-COHN/SELTZER. “DE” citations refer to docket entries in the instant criminal proceedings.

discretion of the district court, and [the Eleventh Circuit] will set aside the denial of relief from such motion only for abuse of that discretion.” Cheney v. Anchor Glass Container Corp., 71 F.3d 848, 849 n.2 (11th Cir.1996). The Eleventh Circuit also cautions that relief under Rule 60(b)(6), the catchall provision, “is an extraordinary remedy which may be invoked only upon a showing of exceptional circumstances.” Cavaliere v. Allstate Ins. Co., 996 F.2d 1111, 1115 (11th Cir.1993) (internal citations and quotations omitted). Rule 60(b)(6) applies only to cases that do not fall within any other provision of Rule 60(b). Rease v. AT&T Corp., 358 Fed. Appx. 73, 76 (11th Cir. 2009).

Defendant has failed to show exceptional circumstances justifying the requested relief. If his post-conviction counsel was deprived of any relevant records, the proper recourse was to seek such records during the course of the adjudication of Defendant’s § 2255 Petition. No such request was made. Defendant’s unsupported contention, years after the fact, that his counsel was “deprived of the entire record below” does not justify the extraordinary remedy of reinstating Defendant’s § 2255 Petition. Additionally, to the extent Defendant’s Motion can be construed as alleging ineffective assistance of his post-conviction counsel, the Court notes that the alleged ineffective assistance of Defendant’s counsel in connection with Defendant’s 2255 motion cannot justify relief under Rule 60(b) because there is no constitutional right to counsel in postconviction proceedings. Coleman v. Thompson, 501 U.S. 722, 752-55 (1991). It is thereupon

ORDERED AND ADJUDGED that Defendant Samuel Knowles’ “Motion Filed Under Fed. R. of Civ. Rule 60(b) for Relief From Final Judgment Order Denying 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct Sentence” [DE 361] is **DENIED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 19th day of December, 2017.



James I. Cohn
JAMES I. COHN
United States District Judge

Copies provided to counsel of record via CM/ECF and pro se parties via U.S. mail to address on file