

APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17392
Non-Argument Calendar

D.C. Docket No. 9:07-cv-80485-DTKH

RONNIE LEE MCGEE,

Petitioner-Appellant,

versus

THE ATTORNEY GENERAL OF THE STATE OF FLORIDA,

Respondent-Appellee.

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

(November 29, 2017)

Before MARCUS, ROSENBAUM, and EDMONDSON, Circuit Judges.

PER CURIAM:

Petitioner Ronnie McGee, a Florida prisoner proceeding pro se, appeals the district court's dismissal of his motion for relief from judgment; a motion filed pursuant to Fed. R. Civ. P. 60(b). The district court construed Petitioner's motion as an unauthorized second or successive 28 U.S.C. § 2254 habeas petition and dismissed the petition for lack of jurisdiction. No reversible error has been shown; we affirm.

In 2007, Petitioner filed a section 2254 habeas petition, challenging his state court convictions and life sentences for second degree murder, robbery, and grand theft. In his petition, Petitioner raised four claims of ineffective assistance of counsel. The magistrate judge issued a report and recommendation ("R&R"), in which the magistrate judge recommended denying the petition on the merits.

Petitioner filed objections to the R&R. Briefly stated, Petitioner argued that -- because the magistrate judge misinterpreted his claims -- the magistrate judge failed to address properly all of the claims raised in his section 2254 petition. After considering Petitioner's objections, the district court adopted the R&R and denied the habeas petition.

In 2016, Petitioner filed the Rule 60(b) motion at issue in this appeal.

Petitioner argued that the district court misconstrued the claims raised in his 2007 habeas petition and, thus, failed to reach the actual merits of his claims. Petitioner asserted that the district court's failure to address his claims constituted a defect in his earlier federal habeas proceeding – making review appropriate under Rule 60(b).

The district court construed Petitioner's motion as a successive section 2254 motion. Because Petitioner had obtained no authorization from this Court to file a successive application, the district court dismissed the petition for lack of jurisdiction. In the alternative, the district court determined that Petitioner's motion would be subject to denial because Petitioner had failed to demonstrate “extraordinary circumstances” or other grounds justifying relief under Rule 60(b).*

We review de novo questions about jurisdiction. Williams v. Chatman, 510 F.3d 1290, 1293 (11th Cir. 2007).

A Rule 60(b) motion for relief from the denial of a section 2254 petition is considered a successive habeas petition if the motion “seeks to add a new ground for relief” or if it “attacks the federal court's previous resolution of a claim *on the merits*.” Gonzalez v. Crosby, 545 U.S. 524, 531-32 (2005) (emphasis in original). In contrast, a Rule 60(b) motion is not treated as a successive habeas petition if it

* Because we conclude that Petitioner's motion was construed properly as a second or successive section 2254 petition, we do not address the district court's alternative ruling.

challenges, “not the substance of the federal court’s resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings,” such as fraud on the court. Id. at 532, 532 n.5.

When a Rule 60(b) motion qualifies as a second or successive habeas petition, a state prisoner must first move the court of appeals for an order authorizing the district court to consider such a petition. See 28 U.S.C. § 2244(b)(3)(A). When a prisoner fails to obtain such authorization, the district court lacks jurisdiction to consider the merits of the petition. Williams, 510 F.3d at 1295.

In his Rule 60(b) motion, Petitioner identifies no defect in the integrity of his federal habeas proceedings. Instead, he raises the same arguments he already made in his objections to the R&R: arguments that were considered and rejected by the district court. In essence, Petitioner seeks to challenge the district court’s ruling on the merits of the claims raised in his 2007 habeas petition. The district court, thus, construed properly Petitioner’s Rule 60(b) motion as a successive section 2254 petition. We affirm the district court’s dismissal for lack of jurisdiction.

AFFIRMED.

APPENDIX B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 07-80485-CIV-HURLEY

RONNIE LEE McGEE,

Petitioner,

vs.

BILL McCOLLUM,

The Attorney General of the State of Florida,

Respondent.

ORDER DISMISSING RULE 60(B) MOTION FOR RELIEF FROM JUDGMENT

THIS CAUSE is before the Court on the petitioner's "Motion for Relief from Judgment" seeking to vacate a prior order of the Court denying the Petitioner's petition for writ of habeas corpus [DE 31].¹

Petitioner purports to file his motion under Fed. R. Civ. P. 60(b), seeking to reopen his previously denied motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2254. In support of his motion, he contends that this Court misconstrued the claims raised in his original § 2254 petition, and consequently, did not reach the actual merits of his claims. Therefore, he contends his current motion should not be treated as a successive § 2254 petition.

A review of the current motion, however, plainly demonstrates that the petitioner is challenging this Court's resolution of his original § 2254 petition on the merits. The motion is therefore necessarily construed as a successive § 2254 motion, and as such, dismissed for lack of jurisdiction as the petitioner has failed to first obtain permission to proceed from the Eleventh

¹ The petitioner sought a certificate of appealability from the original judgment, which this Court denied [DE22], as did the Eleventh Circuit Court of Appeals on direct motion [DE 27].


Circuit Court of Appeals. *See Gonzalez v Crosby*, 545 U.S. 524, 532, 125 S. C. 2641, 162 L.Ed.2d 480 (2005)(motion styled as petition for writ of habeas corpus invoking Rules 60(b) and 54(b) construed as seeking leave to file a successive 2255 motion because it challenged the resolution of appellant's previous 2255 motion on the merits).

Moreover, even if petitioner's Rule 60(b) motion were not deemed a successive § 2254 motion, it would be denied because petitioner does not demonstrate "extraordinary circumstances" justifying relief under the catch-all provision at Rule 60(b) (6), which gives the court broad latitude to relieve a party from judgment for "any other reason that justifies relief," nor does he identify any other ground bringing the matter within the grounds specified in the Rule.

It is accordingly **ORDERED AND ADJUDGED**:

The petitioner's motion for relief from judgment [DE 31] is **DISMISSED** for lack of jurisdiction.

DONE AND SIGNED in Chambers at West Palm Beach, Florida this 3rd day of November, 2016.


Daniel T. K. Hurley
United States District Judge

cc. all parties

APPENDIX C

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

July 16, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 16-17392-AA

Case Style: Ronnie McGee v. Attorney General, State of FL, et al

District Court Docket No: 9:07-cv-80485-DTKH

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Tonya L. Searcy, AA
Phone #: (404) 335-6180

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-17392-AA

RONNIE LEE MCGEE,

Petitioner - Appellant,

versus

THE ATTORNEY GENERAL OF THE STATE OF FLORIDA,

Respondents - Appellees.

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

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: MARCUS, ROSENBAUM, and EDMONDSON, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

ORD-42

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from this filing is
available in the
Clerk's Office.**