

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

No: 18-1373

Larry Flenoid

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:07-cv-00008-RWS)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

July 11, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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

No: 18-1373

Larry Flenoid

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Eastern District of Missouri - St. Louis
(4:07-cv-00008-RWS)

JUDGMENT

Before COLLOTON, BENTON and KELLY, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

May 22, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

LARRY FLENOID,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

No. 4:07-cv-8-RWS

ORDER

Movant Larry Flenoid moves for reconsideration of this Court's January 4, 2018 Order denying his motion to reopen his case. In support, movant merely reasserts arguments that have been repeatedly raised and denied since the 2009 denial of his 28 U.S.C. § 2255 motion to vacate. The motion is meritless, and will be denied as such.

The Court has considered whether to issue a certificate of appealability. To do so, the Court must find a substantial showing of the denial of a federal constitutional right. *See Tiedeman v. Benson*, 122 F.3d 518, 522 (8th Cir. 1997). A substantial showing is a showing that issues are debatable among reasonable jurists, a Court could resolve the issues differently, or the issues deserve further proceedings. *Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997) (*citing Flieger v.*

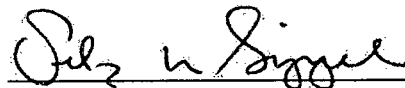
Delo, 16 F.3d 878, 882–83 (8th Cir. 1994)). Because movant has made no such showing, the Court will not issue a certificate of appealability.

Accordingly,

IT IS HEREBY ORDERED that movant's motion for reconsideration (Docket No. 99) is **DENIED**.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

Dated this 7th day of February, 2018.

A handwritten signature in cursive script, appearing to read "Rodney W. Sippel", is written over a horizontal line.

RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LARRY FLENOID,)	
)	
Movant,)	
)	
v.)	Case No. 4:07 CV 8 RWS
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

On December 6, 2017, Movant Larry Flenoid filed a motion under Federal Rule of Civil Procedure 60(b) challenging an order of United States District Judge Donald J. Stohr entered on June 18, 2009. Judge Stohr's order denied Flenoid's motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255.

Flenoid's present motion asserts that Judge Stohr erred in failing to consider Flenoid's 292 page traverse when ruling on Flenoid's motion to vacate. Flenoid previously raised this claim in a motion to reconsider which he filed on July 10, 2009. Judge Stohr denied the motion to reconsider on November 3, 2009. Flenoid appealed Judge Stohr's ruling to the United States Court of Appeals for the Eighth Circuit. Flenoid specifically asserted a ground for relief in his appeal based on Judge Stohr's failure to consider Flenoid's traverse. On February 26, 2010, the Eighth Circuit Court of Appeals issued a judgment declining to issue Flenoid a

certificate of appealability for his appeal. Flenoid filed a motion to reconsider that judgment which the Eighth Circuit Court of Appeals denied on March 21, 2010.

On November 12, 2010, Flenoid filed motion to reopen under Federal Rule of Civil Procedure 60(b) seeking relief from Judge Stohr's failure to consider Flenoid's traverse. That motion was denied on December 6, 2010. Flenoid appealed that order to the Eighth Circuit Court of Appeals which denied the appeal on February 17, 2011.

Since that date Flenoid filed three more motions seeking to relitigate the denial of his original motion to vacate. All of these motions have been denied because Flenoid has already raised these claims and they have been denied and his appeals have been denied. Flenoid's repeated challenges to Judge Stohr's order and judgment, including the present one, are without merit. This case is closed.

Accordingly,

IT IS HEREBY ORDERED that Petitioner Larry Flenoid's motion to reopen this case [97] is **DENIED**.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 4th day of January, 2018.

No. 4:07CV8-DJS

On January 22, 2004, a jury found Larry Flenoid guilty of both counts of the superseding indictment in United States v. Larry Flenoid, S1-4:03CR501-DJS. Count I charged an escape from the custody of the Bureau of Prisons, in violation of 18 U.S.C. §751(a)(1). Count II charged Flenoid with being a felon in possession of a firearm in violation of 18 U.S.C. §922(g)(1) and §924(e)(1). At sentencing, in view of the shooting death of Ricky Forehand during Flenoid's escape, the Court's Sentencing Guidelines computation applied a cross-reference, pursuant to §2K2.1(c)(1)(B), to the First Degree Murder guideline at §2A1.1(a), to reach a total offense level of 43. As an armed career criminal, Flenoid's criminal history category was VI. On April 9, 2004, the Court sentenced Flenoid to 60 months' imprisonment on Count I, and a term of life imprisonment on Count II.

The Court of Appeals for the Eighth Circuit affirmed Flenoid's conviction and sentence on July 29, 2005, and denied petitions for rehearing thereafter. On January 23, 2006, the United States Supreme Court denied Flenoid's petition for a writ of certiorari. On January 9, 2008, a jury in St. Louis County Circuit Court found Flenoid guilty of first degree murder in the death of Forehand, as well as of kidnapping, burglary, unlawful use of a weapon, assault and two counts of armed criminal action. Flenoid was later sentenced in the state court to life in prison without parole. Now before the Court is Flenoid's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. §2255.

Flenoid's motion under §2255 [Doc. #1] is 68 pages in length, with the court-provided form accounting for the first 14 pages and the rest hand-written. Flenoid submitted a traverse [Doc. #24], consisting of 228 handwritten pages plus 65 pages of exhibits, most of which are also documents hand-written by Flenoid. This document grossly exceeds the Court's 15-page limitation for motions, memoranda and briefs set out in E.D.Mo. L.R. 7-4.01(D). No leave to file the over-length traverse was sought, and none will be granted. The page limitation is not enforced against the 68-page §2255 motion, which functions as the initial pleading in this matter, and the length of which affords petitioner ample opportunity to set forth his arguments. In addition, more recently, on June 5, 2009, Flenoid filed a document entitled "Rule 7 - Expanding the Record" [Doc. #37]. Because the document

contains additional argument and citations for the Court's consideration on petitioner's grounds for relief, the Court will treat that document as a supplemental traverse. The Court does not grant leave for the filing of the 228-page traverse [Doc. #24], which will not be considered.

The fourteen-page form portion of movant's §2255 motion identifies each of four grounds for relief only in broad categories as follows: Ground One: ineffective assistance of counsel; Ground Two: Fifth Amendment due process; Ground Three: Sixth Amendment and Eighth Amendment; Ground Four: Fourteenth Amendment, Equal Protection, Due Process. For each ground, movant's form motion directs the reader to the attached pages for further definition of the claims for relief. On those pages, movant does not address his categories of claims in the same order, instead beginning with twelve claims enumerated under the heading "Sixth Amendment." Under the ineffective assistance of counsel heading, movant sets forth 34 claims under sub-headings of pretrial, trial, sentencing and appeal, numbering thirteen, six, ten and five, respectively. Movant enumerates 45 claims under the heading "5th Amendment Due Process Violations." Three claims are set forth under the heading "Eighth Amendment." Lastly, eleven claims are enumerated under a heading referring to the Fourteenth Amendment and Equal Protection.

The assertion of this total of 105 grounds for relief creates a record that is unmanageably prolix, as movant's hundreds of handwritten pages suggests. Nonetheless, counsel for the

government has attempted to respond to each of the claims, noting that they are "repetitious, non-cognizable, and otherwise meritless" and that many are procedurally defaulted. Response to Show Cause Order [Doc. #21], p.5. The Court has spent days carefully reviewing the more than 100 claims Flenoid asserts, and finds that none of them entitles him to relief under the applicable standards of §2255(a) and (b). The number of the claims precludes, and their meritlessness does not warrant, particularized discussion of the Court's analysis of each.

Upon careful consideration of the record, including as necessary the underlying criminal file, the Court is convinced that the file and record of the case conclusively show that movant is not entitled to relief. Accordingly, no evidentiary hearing will be had, and the instant motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. §2255 will be denied by a judgment entered separately herein this day. The Court has also considered Flenoid's "Request for Information via Discovery," motion offering arguments concerning the proper interpretation and application of the armed career criminal classification, and a second request for what movant calls discovery, and finds such motions to be without merit.

Accordingly,

IT IS HEREBY ORDERED that movant's "Request for Information via Discovery" [Doc. #30] is denied.