

APPENDIX A

Decision of United States Court of Appeals

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT



No. 17-10581

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ANDRECO LOTT,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas

O R D E R:

Andreco Lott, federal prisoner # 27068-177, is serving a 1,111-month prison sentence for multiple counts related to robbery, bank robbery, and using and carrying a firearm during a crime of violence. He now moves this court for a certificate of appealability (COA) so that he may appeal the district court's decision to deny his motion under Federal Rule of Civil Procedure 60(b) seeking relief from the 2005 denial of his 28 U.S.C. § 2255 motion. In the Rule 60(b) motion, Lott contended that the district court neglected to address all of his § 2255 claims and improperly decided the motion without holding an evidentiary hearing.

The court will grant Lott a COA if he makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Buck v. Davis*, 137 S. Ct. 759, 773 (2017). That is, he must establish that reasonable jurists

A True Copy
Certified order issued Mar 06, 2018

Jyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

could disagree with the decision to deny relief or that the issues he presents deserve encouragement to proceed further. *See Buck*, 137 S. Ct. at 774. Because Lott seeks a COA from the denial of a Rule 60(b) motion, he must demonstrate that reasonable jurists could conclude that the district court abused its discretion in denying him relief from the judgment. *See id.* at 777; *Hernandez v. Thaler*, 630 F.3d 420, 428 (5th Cir. 2011). Lott has not made the required showing. Accordingly, his motion for a COA is DENIED.

/s/ Priscilla R. Owen

PRISCILLA R. OWEN
UNITED STATES CIRCUIT JUDGE

APPENDIX B

Decision of United States District Court

In 3-23-17

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MAR 15 2017

ANDRECO LOTT,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

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NO. 4:04-CV-740-A
(No. 4:01-CR-177-A)

CLERK, U.S. DISTRICT COURT
By _____ Deputy

ORDER

Came on for consideration the motion filed by Andreco Lott ("Lott"), for relief from a final judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Having considered the motion, the court finds that it should be dismissed.

On February 11, 2005, the court entered a final judgment denying Lott's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence. Lott filed this motion on March 13, 2017. Under Rule 60(c)(1) of the Federal Rules of Civil Procedure, a motion under Rule 60(b) must be made within a reasonable time. The court finds that more than twelve years is not a reasonable time.

Regardless, Lott's motion is without merit. Lott alleged that the court failed to rule "on the merits of 32 of his habeas claims" in dismissing his § 2255 motion. In fact, Lott raised seventeen claims in his motion, most of which pertained to

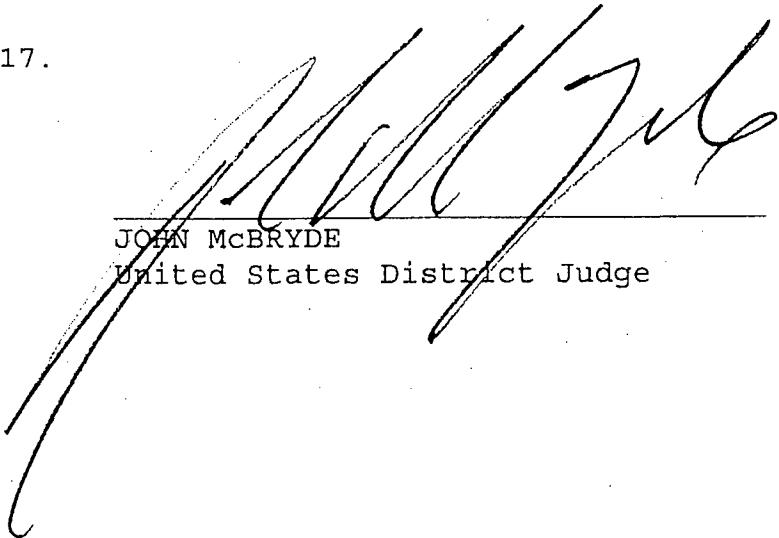
Ex 2

ineffective assistance of counsel. In the court's memorandum opinion and order signed February 11, 2005, the court addressed each of Lott's claims in the order they appeared in his motion. Lott's allegations otherwise are simply without merit.

Therefore,

The court orders that Lott's motion be, and is hereby, denied.

SIGNED March 15, 2017.


JOHN McBRYDE
United States District Judge

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

APR 18 2017

CLERK, U.S. DISTRICT COURT

By _____
Deputy

ANDRECO LOTT,

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Petitioner,

VS.

NO. 4:04-CV-740-A
(No. 4:01-CR-177-A)

UNITED STATES OF AMERICA,

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Respondent.

ORDER

Came on for consideration the motion of Andreco Lott ("Lott") titled "Motion for Reconsideration" brought pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. Lott seeks to have the court alter or amend its order signed March 15, 2017, denying Lott's motion for relief from final judgment pursuant to Rule 60(b), as well as alter or amend its final judgment signed February 11, 2005, denying Lott's motion under 28 U.S.C. § 2255. Having considered the instant motion, the court finds nothing therein as would cause the court to reconsider either the March 15, 2017, order¹ or the February 11, 2005, final judgment. Therefore,

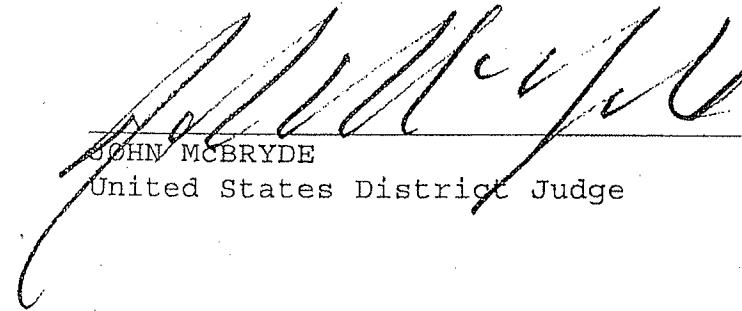
The court ORDERS that Lott's motion to alter or amend

¹Lott is correct in stating that motions under Rule 60(b)(4) are not subject Rule 60(c)(1)'s "reasonable time" limitation within the Fifth Circuit. However, Lott did not allege any facts that, if true, would cause the judgment of which he complains to be void.

EX 4

judgment be, and is hereby, denied.

SIGNED April 18, 2017.


JOHN MCBRYDE
United States District Judge

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
MAY 22 2017
CLERK, U.S. DISTRICT COURT
By _____ Deputy

ANDRECO LOTT,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

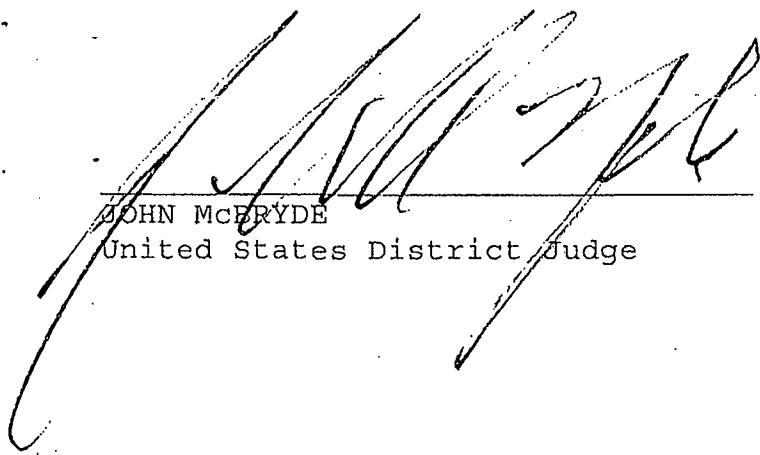
§ NO. 4:04-CV-740-A
§ (NO. 4:01-CR-177-A)

ORDER

Came on for consideration the motion of petitioner, Andreco Lott, for certificate of appealability from the denials of his motion for relief from a final judgment and his motion for reconsideration. Having considered the motion, the court concludes that it should be denied. Therefore,

The court ORDERS that petitioner's motion for certificate of appealability be, and is hereby, denied.

SIGNED May 22, 2017:


JOHN McERYDE
United States District Judge

APPENDIX C

Order of U.S. Court of Appeals denying Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10581

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

ANDRECO LOTT,

Defendant - Appellant

Appeal from the United States District Court
for the Northern District of Texas

ON MOTION FOR RECONSIDERATION AND REHEARING EN BANC

Before DAVIS, CLEMENT and OWEN, Circuit Judges.

PER CURIAM:

() The Motion for Reconsideration is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED. R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

() The Motion for Reconsideration is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor, (FED. R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

() A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service and not disqualified not having voted in favor, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

Priscilla R. Owen
UNITED STATES CIRCUIT JUDGE

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