

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10980

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

NORRIS LYNN FISHER,

Defendant - Appellant

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

ON PETITION FOR REHEARING EN BANC

(Opinion October 17, 2018, 5 Cir., _____, _____ F.3d _____)

Before SMITH, HIGGINSON, and DUNCAN, Circuit Judges.

PER CURIAM:

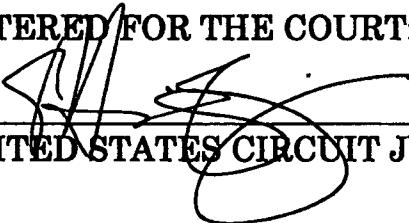
(✓) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

() Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. 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 DENIED.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE



IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-10980

United States Court of Appeals
Fifth Circuit

FILED

October 17, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

NORRIS LYNN FISHER,

Defendant-Appellant

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

USDC No. 4:13-CV-684

USDC No. 4:10-CR-74-1

Before SMITH, HIGGINSON, and DUNCAN, Circuit Judges.

PER CURIAM:*

Norris Lynn Fiser, federal prisoner # 41251-177, is serving a 240-month sentence for his convictions of conspiring to commit mail fraud and three counts of committing mail fraud. He seeks a certificate of appealability (COA) to appeal the district court's order denying his motions for (1) relief under Federal Rule of Civil Procedure 60(b) from the denial of his unsuccessful 28 U.S.C. § 2255 motion; (2) leave to amend his Rule 60(b) motion and for his

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

memorandum in support of his Rule 60(b) motion to exceed 30 pages; (3) leave to proceed in forma pauperis (IFP); (4) the appointment of counsel; and (5) a transfer of his proceedings to the Southern District of New York.

To obtain a COA, Fisher must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000). Because Fisher is appealing procedural rulings, we will issue a COA only if he shows that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack*, 529 U.S. at 484.

In his various filings, Fisher raised claims challenging his conviction, sentence, and the district court’s denial of his § 2255 motion on the merits. We construe those claims as unauthorized successive § 2255 motions over which the district court lacked jurisdiction. *See Gonzalez v. Crosby*, 545 U.S. 524, 530–33 (2005); *United States v. Hernandes*, 708 F.3d 680, 681 (5th Cir. 2013). Fisher’s challenge to the district court’s denial of those claims does not deserve encouragement to proceed further. *See Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Fisher also alleged errors in the district court’s handling of his § 2255 proceedings. Although those claims constituted bona fide requests for Rule 60(b) relief, Fisher has not identified any abuse of discretion in the district court’s denial of his motion, and jurists of reason would not debate the district court’s denial of those claims. Fisher’s motion for a COA to appeal the district court’s denial of his unauthorized successive § 2255 motions and Rule 60(b) motion is DENIED.

Fisher does not need a COA to appeal the district court’s denials of his motions for leave to proceed IFP, for the appointment of counsel (to the extent

Fisher actually sought the appointment of counsel), and for a transfer (to the extent Fisher actually sought a transfer). *See* 28 U.S.C. § 2253(c)(1)(B); *Harbison v. Bell*, 556 U.S. 180, 183 (2009). His motion for a COA to challenge those decisions is DENIED as unnecessary. However, Fisher does not assert that the district court erred in denying any of those motions and has abandoned any challenge he might have raised. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999). The district court's denial of those motions is AFFIRMED.

With his appeal, Fisher has filed motions for the appointment of counsel and to amend his motion for a COA. Those motions are DENIED.

Fisher also has filed a motion that effectively asks this court to issue a writ of mandamus to the Federal Public Defender's Office for the Northern District of Texas, the United States Attorney's Office for the Northern District of Texas, the Federal Public Defender's Office, and United States District Judge Barbara Lynn ordering release of information he has requested, and to the Department of Justice and the Federal Bureau of Investigation ordering an investigation. That motion is DENIED. *See In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987).

Finally, Fisher has moved for this court to vacate his sentence and order his release from prison. Fisher appears to attempt to invoke original habeas corpus jurisdiction in this court pursuant to 28 U.S.C. § 2241. Section 2241 does not grant federal courts of appeals jurisdiction to entertain an original petition for habeas corpus. 28 U.S.C. § 2241. To the extent individual judges of this court may retain jurisdiction to entertain such a petition, *see Felker v. Turpin*, 518 U.S. 651, 660–61 & n.3 (1996), the members of this panel decline to do so. Fisher's motion is DENIED.

Fisher is warned that repeated filing of frivolous challenges to his convictions and sentences in this court, or any court subject to this court's jurisdiction, may result in the imposition of sanctions, including dismissal, monetary sanctions, and possibly denial of access to the judicial system.

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

NORRIS LYNN FISHER §
§ Civil No. 4:13-CV-684-Y
V. § (Crim. No. 4:10-CR-074-Y-1)
§
UNITED STATES OF AMERICA §

ORDER DENYING CERTIFICATE OF APPEALABILITY

In July 2017, Norris Lynn Fisher filed in this Court a Motion for Leave of the Court to Amend Renewed Rule 60(b)(6) and for the Memorandum of Law to Exceed Thirty (30) Pages (CV doc. 38) and his Renewed Motion for Rule 60(b)(6) (CV doc. 39). The motions sought to reopen this Court's prior judgment denying relief under 28 U.S.C. § 2255. On August 21, 2017, this Court denied the motions. (Order (CV doc. 42).) Fisher now seeks to appeal that ruling. (Notice of Appeal (CV doc. 44).)

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability (COA) is issued under 28 U.S.C. § 2253. Fed. R. App. P. 22(b). Rule 11 of the Rules Governing Section 2255 Proceedings requires that the Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rules Governing Section 2255 Proceedings in the United States District Courts, Rule 11(a) (February 1, 2010). The COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard by showing "that jurists of reason could disagree with the

district court's resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Upon review and consideration of the record, the Court determines Fisher has not made a showing that reasonable jurists would question this Court's rulings. Therefore, the Court finds a certificate of appealability SHOULD NOT issue.

SIGNED September 13, 2018.

Terry R. Means
TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

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

NORRIS LYNN FISHER §
VS. § ACTION NO. 4:13-CV-684-Y
UNITED STATES OF AMERICA § (CRIM. NO. 4:10-CR-074-Y)

ORDER DENYING PENDING MOTIONS

Pending before the Court is petitioner Norris Lynn Fisher's Motion for the Court to Accept Declaration of Inability to Pay (doc. 34). Fisher apparently wants to proceed in forma pauperis regarding his Renewed Rule 60(b)(6) motion. No filing fees are required, however, for purposes of pursuing such a motion. Furthermore, Fisher has not submitted the affidavit required by 28 U.S.C. § 1915(a)(1) for a party to be permitted to proceed in forma pauperis. As a result, Fisher's motion is DENIED.

Also pending before the Court is Fisher's Motion for Set Aside and Appointment of Counsel (doc. 36) and his Motion to Transfer Cause and Case (doc. 37). In the former, Fisher requests that the Federal Public Defender ("FPD") be ordered to set aside almost three million dollars for his representation, and that two different counsel be appointed to represent him as a result of racial discrimination in his case by the FPD, this Court, and the United States Court of Appeals for the Fifth Circuit. The latter motion requests that Fisher's case be transferred because the FPD, this Court, and the Fifth Circuit "are NOT equipped to investigate, prosecute, and adjudicate Complex-Mail-Fraud Cases and Complex-Economic-Fraud Cases."

Fisher also complains that the government engaged in forum-shopping by filing his criminal case in this district, and that this Court denied him due process by denying his motion for a change of venue and for a continuance.

As previously mentioned in the order denying similar motions filed in Fisher's criminal case, however, both Fisher's criminal case and this § 2255 proceeding have been finally adjudicated. Fisher's § 2255 motion was denied by this Court on May 27, 2014. The Fifth Circuit denied a certificate of appealability regarding that decision on August 20, 2015, and the Supreme Court denied certiorari on June 28, 2016. The Fifth Circuit also recently denied leave for Fisher to file a successive § 2255 motion. Consequently, Fisher's Motion to Set Aside and Appoint Counsel and his Motion to Transfer lack merit and are hereby DENIED.

Finally pending are Fisher's Motion for Leave of the Court to Amend Renewed Rule 60(b) (6) and for the Memorandum of Law to Exceed Thirty (30) Pages (doc. 38) and his Renewed Motion for Rule 60(b) (6) Relief (doc. 39). In the former motion, Fisher seeks leave to amend his Rule 60(b) motion "as additional exhibits and evidence are received" from government officials and the media. He also requests that his memorandum of law submitted with his motion be permitted to exceed thirty pages in contravention of Local Civil Rule 7.2(c). The Renewed Motion for Rule 60(b) (6) Relief seeks relief on the grounds of a alleged violations of Fisher's Fifth Amendment right to counsel and his Eighth Amendment right to be from excessive bail and cruel and unusual punishment in his criminal prosecution. He

also complains about this Court's handling of his § 2255 motion. The Court concludes that these motions should be and hereby are DENIED. Initially, the Court notes that Fisher has provided no basis for exceeding the Local Civil Rule 7.2(c)'s twenty-five page limit. More problematic for Fisher, however, is the fact that, as previously mentioned, his criminal conviction and his § 2255 motion have already been finally adjudicated. Fisher cannot now revisit those proceedings and complain about actions undertaken therein.

SIGNED August 21, 2017.



TERRY R. MEANS
UNITED STATES DISTRICT JUDGE