

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-11364-E

IHAB STEVE BARSOUM,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

ORDER:

Ihab Barsoum is a federal prisoner serving a total sentence of 188 months' imprisonment after being convicted by a jury of conspiracy to distribute Oxycodone not for a legitimate professional practice and 5 counts of distribution of Oxycodone outside the course of professional practice. Barsoum seeks a certificate of appealability ("COA") in order to appeal the district court's denial of his Fed. R. Civ. P. 60(b) motion, following the denial of his motion to vacate, under 28 U.S.C. § 2255.

As background, Barsoum filed a *pro se* 28 U.S.C. § 2255 motion to vacate, arguing that his trial counsel was ineffective for advising him to reject a plea offer. Barsoum then filed a motion to supplement the record with a declaration and a report of the post-trial safety-valve interview that the Drug Enforcement Administration ("DEA") conducted with him. The district court denied Barsoum's motion to supplement the record without prejudice, directing Barsoum

to resubmit the supplement accompanied by a statement of what claim the supplement supported and why. Barsoum never resubmitted his motion.

The district court denied Barsoum's § 2255 motion. Thereafter, Barsoum filed a motion for reconsideration, arguing that the district court had erred by rejecting his declaration and the DEA report of the safety-valve interview. Barsoum did not explain why he failed to re-file his motion to supplement the record. After the government responded, the district court denied Barsoum's motion for reconsideration and denied him a certificate of appealability ("COA").

Barsoum appealed the denial of his § 2255 motion and the denial of his motion for reconsideration. He then sought a COA in this Court, arguing that the district court erred in rejecting his motion to supplement the record with his second declaration and the DEA report. A single judge of this Court denied Barsoum a COA, noting that the district court had not abused its discretion by denying his motion to supplement, as that motion had been dismissed without prejudice and the court had given him time to resubmit his supplement, which he had not done.

Barsoum then filed a Fed. R. Civ. P. 60(b) motion, arguing that the district court had abused its discretion by denying his motion to supplement. He argued that his motion to supplement, properly construed, raised two additional claims for relief. The district court summarily denied Barsoum's Rule 60(b) motion as meritless and denied him a COA. Barsoum now moves this Court for a COA.

To obtain a COA, a habeas petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to obtain a COA, a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The petitioner satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues

"deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted). The appeal of a Rule 60(b) motion is limited to a determination of whether the district court abused its discretion in denying the motion, and shall not extend to the validity of the underlying judgment *per se*. *Rice v. Ford Motor Co.*, 88 F.3d 914, 918-19 (11th Cir. 1996).

Here, the district court did not abuse its discretion by denying Barsoum's Rule 60(b) motion as meritless. Even though he claimed in his Rule 60(b) motion that his motion to supplement had attempted to raise new claims, he already had unsuccessfully appealed the denial of that motion to supplement. Thus, the district court lacked authority to contravene this Court's prior ruling. Accordingly, Barsoum's motion for a COA is DENIED.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE