

# **APPENDIX A**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

United States of America,

Crim. No. 11-141 (PAM/SER)

Plaintiff,

**ORDER**

v.

Frank Elroy Vennes, Jr.,

Defendant.

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This matter is before the Court on Pro Se Defendant's Motion for Relief from Final Judgment under Fed. R. Civ. P. 60(d)(3). The Court denied Defendant's first § 2255 Motion in April 2015. (Docket No. 410.) Defendant applied for a certificate of appealability to the Eighth Circuit Court of Appeals. And while that application was pending, he filed a second § 2255 Motion, which the Court denied. (Docket No. 461.) Defendant also appealed the denial of the second § 2255 Motion. The Eighth Circuit denied Defendant's application for a certificate of appealability and summarily affirmed the denial of his § 2255 Motions. (Docket Nos. 472-73.) The United States Supreme Court subsequently denied certiorari.

Defendant again raises the same arguments. Thus, this Motion is nothing more than yet another attempt to seek habeas relief, which the Court will deny as procedurally barred. See 28 U.S.C. § 2244(b)(3)(A). **IT IS HEREBY ORDERED that Defendant's Pro Se Motion for Relief from Final Judgment (Docket No. 542) is DENIED.**

Dated: June 18, 2018

s/ Paul A. Magnuson

Paul A. Magnuson  
United States District Court Judge

## **APPENDIX B**

**United States Court of Appeals  
For The Eighth Circuit**  
Thomas F. Eagleton U.S. Courthouse  
111 South 10th Street, Room 24.329  
**St. Louis, Missouri 63102**

**Michael E. Gans**  
*Clerk of Court*

**VOICE (314) 244-2400  
FAX (314) 244-2780  
www.ca8.uscourts.gov**

December 03, 2018

Mr. Frank Elroy Vennes Jr.  
FEDERAL CORRECTIONAL INSTITUTION  
05123-059  
P.O. Box 1000  
Butner, NC 27509-1000

RE: 18-2790 Frank Vennes, Jr. v. United States

Dear Mr. Vennes:

Enclosed is a copy of the dispositive order entered today in the referenced case.

Please review Federal Rules of Appellate Procedure and the Eighth Circuit Rules on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing must be received by the clerk's office within the time set by FRAP 40 in cases where the United States or an officer or agency thereof is a party (within 45 days of entry of judgment). Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. Pro se petitions for rehearing are not afforded a grace period for mailing and are subject to being denied if not timely received.

Michael E. Gans  
Clerk of Court

AMT

Enclosure(s)

cc: Mr. James Sanderson Alexander  
Ms. Kate M. Fogarty  
Mr. Robert Mathias Lewis  
Mr. Timothy Christopher Rank  
Ms. Kimberly A. Svendsen

District Court/Agency Case Number(s): 0:14-cv-04202-RHK

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

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No: 18-2790

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Frank Elroy Vennes, Jr.

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

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Appeal from U.S. District Court for the District of Minnesota  
(0:14-cv-04202-RHK)

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**JUDGMENT**

Before LOKEN, GRUENDER and GRASZ, Circuit Judges.

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

December 03, 2018

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

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/s/ Michael E. Gans

# **APPENDIX C**

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

No: 18-2790

Frank Elroy Vennes, Jr.

Appellant

v.

United States of America

Appellee

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Appeal from U.S. District Court for the District of Minnesota  
(0:14-cv-04202-RHK)

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**ORDER**

The petition for rehearing by the panel is denied.

February 14, 2019

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

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/s/ Michael E. Gans

## **APPENDIX D**

**28 USC § 2244**

Current through PL 116-19, approved May 31, 2019

**§ 2244. Finality of determination**

**(a)** No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255.

**(b)**

**(1)** A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

**(2)** A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless--

**(A)** the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

**(B)**

**(i)** the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

**(ii)** the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

**(3)** **(A)** Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

**(B)** A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

**(C)** The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a *prima facie* showing that the application satisfies the requirements of this subsection.

**(D)** The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

(c) In a habeas corpus proceeding brought in behalf of a person in custody pursuant to the judgment of a State court, a prior judgment of the Supreme Court of the United States on an appeal or review by a writ of certiorari at the instance of the prisoner of the decision of such State court, shall be conclusive as to all issues of fact or law with respect to an asserted denial of a Federal right which constitutes ground for discharge in a habeas corpus proceeding, actually adjudicated by the Supreme Court therein, unless the applicant for the writ of habeas corpus shall plead and the court shall find the existence of a material and controlling fact which did not appear in the record of the proceeding in the Supreme Court and the court shall further find that the applicant for the writ of habeas corpus could not have caused such fact to appear in such record by the exercise of reasonable diligence.

(d) (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

## Federal Rule of Civil Procedure 60

Current through changes received June 13, 2019.

### Rule 60. Relief from a Judgment or Order

**(a) Corrections Based on Clerical Mistakes; Oversights and Omissions.** The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

**(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

**(c) Timing and Effect of the Motion.**

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) *Effect on Finality.* The motion does not affect the judgment's finality or suspend its operation.

**(d) Other Powers to Grant Relief.** This rule does not limit a court's power to:

- (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
- (2) grant relief under 28 U.S.C. § 1655 to a defendant who was not personally notified of the action; or
- (3) set aside a judgment for fraud on the court.

**(e) Bills and Writs Abolished.** The following are abolished: bills of review, bills in the nature of bills of review, and writs of *coram nobis*, *coram vobis*, and *audita querela*.