

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14384-GG

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESSE DEAN,

Defendant-Appellant.

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

Before: WILSON, JILL PRYOR and NEWSOM, Circuit Judges.

BY THE COURT:

The appellant's motion for reconsideration of our order summarily affirming the district court's denial of his *pro se* motion, which we have construed as a dismissal for lack of jurisdiction, is DENIED. All other pending motions are DENIED as MOOT.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-14384-GG

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAR 07 2019

David J. Smith
Clerk

Plaintiff-Appellee,

UNITED STATES OF AMERICA,

versus

JESSE DEAN,

Defendant-Appellant.

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

Before: WILSON, JILL PRYOR and NEWSOM, Circuit Judges.

BY THE COURT:

Jesse Jerome Dean, Jr., a federal prisoner proceeding *pro se*, appeals the district court's denial of his self-styled "motion for emergency bail pending resolution of motion to dismiss indictment, with prejudice, for lack of jurisdiction as acts charged do not constitute a crime, or, in the alternative, motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b)(6) and 60(d)(1)(3), and motion for immediate release," which the district court construed as an unauthorized successive 28 U.S.C. § 2255 motion. On appeal, Dean argues that he is being denied his due process rights and is being incarcerated in violation of the Constitution because (1) the district court lacked jurisdiction in his underlying criminal proceedings, as the acts charged in the indictment did not constitute a crime, and (2) his conviction, and subsequently, the denial of his first 28 U.S.C. § 2255 motion, were obtained based on perjury and fabricated

evidence. The government has responded by moving for summary affirmance, arguing that the district court properly construed and dismissed Dean's motion as an unauthorized successive § 2255 motion.

Summary disposition is appropriate either where time is of the essence, such as "situations where important public policy issues are involved or those where rights delayed are rights denied," or where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

As a preliminary matter, although a COA is required to appeal a final order in a proceeding under § 2255, *see* 28 U.S.C. § 2253(c)(1)(B), we have held that the dismissal of a successive habeas petition for lack of subject-matter jurisdiction does not constitute a "final order in a habeas corpus proceeding" for purposes of § 2253(c). *Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004). Consequently, our jurisdiction to review the dismissal of Dean's Rule 60(b) motion, construed as a successive § 2255 motion, arises under 28 U.S.C. § 1291, and no COA is required. *See Hubbard*, 379 F.3d at 1247.

We review questions concerning jurisdiction *de novo*. *Williams v. Chatman*, 510 F.3d 1290, 1293 (11th Cir. 2007). A district court does not have jurisdiction to entertain an unauthorized second or successive 28 U.S.C. § 2255 motion. *Farris v. United States*, 333 F.3d 1211, 1216 (11th Cir. 2003). A district court's denial of relief under Rule 60(b) is reviewed for an abuse of discretion. *Jackson v. Crosby*, 437 F.3d 1290, 1295 (11th Cir. 2006). "The law is well established that Rule 60(b)(6) affords relief from a final judgment only under extraordinary circumstances. It is also well settled that the matter is within the sound discretion of the district

court, and reviewable on appeal only for abuse of discretion.” *High v. Zant*, 916 F.2d 1507, 1509 (11th Cir. 1990) (citation omitted).

A prisoner in federal custody may file a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack. 28 U.S.C. § 2255(a). A second or successive motion must be certified as provided in 28 U.S.C. § 2244 by a panel of the appropriate court of appeals. 28 U.S.C. § 2255(h). This certification must be obtained before the second or successive motion is filed in the district court. 28 U.S.C. § 2244(b)(3)(A). 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*. 28 U.S.C. § 2244(b)(3)(E).

When a *pro se* plaintiff brings a motion under Rule 60, the district court may appropriately construe it as a § 2255 motion, and, if applicable, treat it as an unauthorized second or successive motion. *Williams v. Chatman*, 510 F.3d 1290, 1293-95 (11th Cir. 2007). Specifically, Rule 60(b) motions are subject to the restrictions of second or successive habeas petitions if the prisoner is attempting to raise a new ground for relief or to attack a federal court’s previous resolution of a claim on the merits, even if “couched in the language of a true Rule 60(b) motion.” *Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005). However, a Rule 60(b) motion is proper if it: (1) asserts that a federal court’s previous habeas ruling that precluded a merits determination (*i.e.*, a procedural ruling such as a failure to exhaust, a procedural bar, or a

statute-of-limitations bar) was in error; or (2) attacks a defect in the federal habeas proceeding's integrity, such as a fraud upon the federal habeas court. *Id.* at 532-36 & nn.4-5.

The district court properly construed Dean's self-styled "motion for emergency bail pending resolution of motion to dismiss indictment, with prejudice, for lack of jurisdiction as acts charged do not constitute a crime, or, in the alternative, motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b)(6) and 60(d)(1)(3), and motion for immediate release" as an unauthorized successive § 2255 motion, as Dean is clearly claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, and that the court was without jurisdiction to impose such sentence. 28 U.S.C. § 2255(a); *Williams*, 510 F.3d at 1293-95. While Dean does assert that there was a defect in the federal habeas proceedings, a claim that would be appropriately raised in a Rule 60(b) motion, in essence, Dean's claims are more properly characterized as those that should be raised in a § 2255 motion. *Gonzalez*, 545 U.S. at 531-32, 532-36 & nn.4-5. As Dean has previously filed a § 2255 motion that was adjudicated on the merits, and because Dean has failed to obtain this Court's permission to file a successive § 2255 motion, the district court properly dismissed his motion. 28 U.S.C. §§ 2255(h); 2244(b)(3)(A). To the extent that Dean is using his motion to attack our denial of his previously filed applications for leave to file a successive § 2255 motion, the denial of an authorization by a court of appeals to file a second or successive application shall not be appealable. 28 U.S.C. § 2244(b)(3)(E).

Therefore, the government's position is correct as a matter of law. *See Groendyke Transp., Inc.*, 406 F.2d at 1162. The government's motion for summary affirmance is GRANTED. The government's motion to stay the briefing schedule is DENIED as moot. All

other pending motions are DENIED as moot.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 94-cr-00506-KMM

UNITED STATES OF AMERICA,

v.

JESSIE JEROME DEAN, JR.

ORDER

THIS CAUSE came before the Court upon Defendant Jesse Jerome Dean, Jr.'s Motion (ECF No. 944). Defendant, proceeding pro se, seeks bail pending resolution of a motion to dismiss the indictment or, in the alternative, relief from judgment pursuant to Rule 60 of the Federal Rules of Civil Procedure and immediate release. The Government filed a Response. Response (ECF No. 945).

In the Response, the Government sets forth Defendant's extensive filing history. Indeed, Defendant has vigorously pursued such relief in a related civil matter. *See (Restricted Filer) v. United States*, 1:0-cv-02145-UU. The relief which Defendant seeks in the instant motion thus constitutes a successive § 2255 motion and must be denied in its entirety.

Accordingly, upon consideration of the instant motion, the pertinent portions of the record, being otherwise fully advised in the premises, and for the reasons set forth in the Government's Response, the Motion (ECF No. 944) is hereby DENIED.

DONE AND ORDERED in Chambers at Miami, Florida, this 2nd day of October, 2018.

K. Michael Moore

Digitally signed by K. Michael Moore
DN: cn=K. Michael Moore, o=Southern District of
Florida, ou=United States District Court,
email=k_michael_moore@flsd.uscourts.gov, c=US
Date: 2018.10.02 14:18:52 -04'00'

K. MICHAEL MOORE
UNITED STATES CHIEF DISTRICT JUDGE

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