Appendix

800 Fed.Appx. 731
This case was not selected for
publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1
generally governing citation of judicial
decisions issued on or after Jan. 1, 2007.
See also U.S. Ct. of App. 11th Cir. Rule 36-2.
United States Court of Appeals, Eleventh Circuit.

Carl ST. PREUX, Petitioner-Appellant,
v.
UNITED STATES of America, Respondent-Appellee.

No. 17-14091
|
Non-Argument Calendar
|
(January 23, 2020)

Synopsis

Background: Following affirmance by the Court of Appeals, 539 Fed.Appx. 946, of denial of defendant's habeas motion arguing, among other things, that one of his prior felony drug convictions should not have been used to enhance his sentence, defendant filed a motion for relief from judgment, also challenging the application of his prior conviction for purposes of enhancing his sentence. The United States District Court for the Middle District of Florida, Nos. 5:17-cv-00096-WTH-PRL; 5:06-cr-00029-WTH-PRL-1, William Terrell Hodges, Senior District Judge, dismissed the motion. Defendant appealed.

[Holding:] The Court of Appeals held that defendant's motion was a second or successive habeas motion.

Affirmed.

Procedural Posture(s): Appellate Review; Post-Trial Hearing Motion.

West Headnotes (1)

[1] **Habeas Corpus** Refusal to Discharge; Subsequent Applications; Prejudice

Defendant's second motion challenging his sentence attacked district court's resolution of his previous habeas motion on its merits, and thus was a second or successive habeas motion which district court had no jurisdiction to consider without permission from appellate court, not a procedural motion for relief from judgment; both motions challenged whether one of defendant's prior felony drug convictions was a valid basis for enhancing his sentence for conspiracy to distribute cocaine and crack cocaine, and arguments in second motion did not address any fraud, mistake, newly discovered evidence, or other limited applicable grounds that would entitle him to relief. Comprehensive Drug Abuse Prevention and Control Act of 1970 §§ 401, 406, 411, 21 U.S.C.A. §§ 841(a)(1), 846, 851(e); 28 U.S.C.A. § 2255; Fed. R. Civ. P. 60(b).

Attorneys and Law Firms

*732 Ali Kamalzadeh, Stephen John Langs, Rosemary Cakmis, Federal Public Defender's Office, Orlando, FL, for Petitioner-Appellant

Carl St. Preux, Pro Se

Linda Julin McNamara, U.S. Attorney Service - Middle District of Florida, U.S. Attorney's Office, Tampa, FL, for Respondent-Appellee

Appeals from the United States District Court for the Middle District of Florida, D.C. Docket Nos. 5:17-cv-00096-WTH-PRL; 5:06-cr-00029-WTH-PRL-1

Before GRANT, LUCK and MARCUS, Circuit Judges.

Opinion

PER CURIAM:

Carl St. Preux appeals the district court's denial of his motion, which he argues is a Federal Rule of Criminal Procedure 60(b) motion, instead of a second or successive 28 U.S.C. § 2255 motion for which he had not obtained permission. On appeal, **St. Preux** says that his motion was a proper Rule 60(b) motion because it did not attack the merits of the district court's earlier decision, but rather, argued that

the court procedurally erred by applying 21 U.S.C. § 851(e)'s statute of limitations and declining to consider the merits of his claim. After careful review, we affirm.

We review de novo questions concerning jurisdiction. Williams v. Chatman, 510 F.3d 1290, 1293 (11th Cir. 2007).

Fed. R. Civ. P. 60(b) allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances, including fraud, mistake, and newly discovered evidence. Fed. R. Civ. P. 60(b); Gonzalez v. Crosby, 545 U.S. 524, 528, 125 S.Ct. 2641, 162 L.Ed.2d 480 (2005). Fed. R. Civ. P. 60(b) provides a basis for a party to seek relief from a final judgment in a § 2255 proceeding only to the extent that the rule does not conflict with the limitations on successive motions in the Antiterrorism and Effective Death Penalty Act. See *733 Gonzalez, 545 U.S. at 529–30, 125 S.Ct. 2641. To obtain relief under Rule 60(b)(6), a party must show "extraordinary circumstances" justifying reopening a final judgment, and this rarely happens in the habeas context. Id. at 535, 125 S.Ct. 2641. A court should treat a motion couched in terms of Rule 60(b) as a successive § 2255 motion if it: (1) "seeks to add a new ground for relief" or (2) "attacks the federal court's previous resolution of a claim on the merits." Id. at 532, 125 S.Ct. 2641 (emphasis omitted). When a Rule 60(b) motion qualifies as a second or successive habeas petition, a district court lacks jurisdiction to consider it absent authorization from us. See 28 U.S.C. § 2255(h).

A petitioner's motion attacks a prior ruling "on the merits" when it alleges "that the movant is, under the substantive provisions of the statutes, entitled to habeas relief." Gonzalez, 545 U.S. at 532, 125 S.Ct. 2641. It does not, however, attack a prior ruling "on the merits" when it "merely asserts that a previous ruling which precluded a merits determination was in error -- for example, a denial for such reasons as failure to exhaust, procedural default, or statute-of-limitations bar." Id. at 532 n.4, 125 S.Ct. 2641.

As the record reflects, St. Preux was found guilty in 2007 of conspiracy to distribute cocaine and crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and his sentence was enhanced, through 21 U.S.C. § 851(e), based on two prior felony drug convictions, one from March 1995 and one from November 1998. In 2011, St. Preux filed a motion in the district court under 28 U.S.C. § 2255, arguing, among other things, that "he should be re-sentenced because [his 1998] predicate state conviction[,] which was used to enhance his federal sentence to a mandatory term of life imprisonment under 21 U.S.C. § 851[,] has now been dismissed by the state court." St. Preux v. United States, 539 F. App'x 946, 947 (11th Cir. 2013) (unpublished). The district court rejected this claim, on the ground that a defendant cannot challenge a predicate conviction used to enhance his sentence under § 851 if that conviction is more than five years old. On appeal, we affirmed, holding that "[u]nder the plain language of [§ 851(e)], St. Preux's challenge to the use of his 1998 state conviction as a basis for a federal sentencing enhancement is foreclosed by" the statute's five-year time limitation. Id. at 948.

Thereafter, in 2017, St. Preux filed the instant motion in the district court, again challenging whether his 1998 conviction was a valid basis for his sentence enhancement, arguing that because adjudication was withheld for his 1998 conviction, it was not a felony conviction that triggered a mandatory life sentence, pursuant to Stewart v. United States, 646 F.3d 856 (11th Cir. 2011). He labeled the instant motion as proceeding under both 28 U.S.C. § 2255 and Rule 60(b). The district court dismissed St. Preux's motion as a successive § 2255 motion for which he had not obtained authorization from this Court.

We agree with the district court that St. Preux's motion, which he now styles as a Rule 60(b) motion, was a successive § 2255 motion that it had no jurisdiction to consider without permission from this Court. As we've said, a district court should treat a motion couched in terms of Rule 60(b) as a successive § 2255 motion if it "attacks the federal court's previous resolution of a claim on the merits." Gonzalez, 545 U.S. at 532, 125 S.Ct. 2641 (emphasis omitted). St. Preux's motion makes clear that he is disputing the district court's application of § 851(e) to enhance his sentence -- he argues that in denying his initial § 2255 motion, the district court "failed to apply the ruling in" Stewart, which, he says, confirmed that he was entitled to relief and that his present motion was not successive. *734 Further, in his brief in this appeal, St. Preux claims that in ruling on his initial § 2255 motion, the district court applied "the

wrong principle" from United States v. Watson, 461 F. App'x 887 (11th Cir. 2012) (unpublished), which held that there are no exceptions to § **851**'s five-year limitations period for challenging a prior conviction unless the defendant could show that his prior conviction was "presumptively void" or "constitutionally invalid."

As the record reflects, both of **St. Preux**'s arguments -- relying on Stewart and Watson -- are directed at the resolution of the question posed by **St. Preux**'s initial § **2255** motion, which was whether § **851**(e), as a legal matter, applied to his habeas proceeding. Notably, these arguments do not address any fraud, factual mistake, newly discovered evidence, or other grounds that would allow **St. Preux**'s motion to fall under Rule 60(b). Gonzalez, 545 U.S. at 528, 125 S.Ct. 2641. Thus, **St. Preux**'s motion seeks to attack "the substance of the federal court's resolution of [his] claim on the merits," and is, thus, a successive § **2255** motion rather than a Rule 60(b) motion. Id. at 532, 125 S.Ct. 2641.

As for **St. Preux**'s reliance on Gonzalez to support his argument that attacking a district court's application of a statute of limitations does not count as an attack on the merits, his application of Gonzalez is mistaken. In Gonzalez, the Supreme Court held that, where the petitioner filed a Rule 60(b) motion challenging the district court's ruling regarding § 2244(b)'s statute of limitations that precluded a merits determination of his habeas claim, his motion did not challenge the merits of the district court's decision, and, accordingly, was a proper Rule 60(b) motion. Id. at 535-36, 125 S.Ct. 2641. Here, however, a different kind of statute of limitations issue was presented to the district court.

In Gonzalez, the AEDPA's statute of limitations had run, thereby precluding the district court from ruling on the merits of the habeas petition at all. Here, **St. Preux** filed his initial habeas petition within AEDPA's statute of limitations, so the district court was able to reach the merits of his habeas claim that his sentence should not have been enhanced through § **851**(e), and determined that **St. Preux** was not entitled to habeas relief because, based on the time limits provided in § **851**(e) itself (and not AEDPA), he could not use § **851** to challenge his 1998 conviction.

Because **St. Preux** is challenging the merits determination in the earlier AEDPA proceedings that he was not entitled to relief based on § **851** -- and not a procedural defect in those proceedings -- the district court properly construed his motion as a second or successive § **2255** motion. Further, because **St. Preux** did not seek prior authorization from this Court before filing his motion in the district court, the district court lacked jurisdiction to consider it. See 28 U.S.C. § **2255**(h). Thus, the district court did not err in dismissing **St. Preux**'s motion for lack of jurisdiction.

AFFIRMED.

All Citations

800 Fed.Appx. 731

End of Document

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14091
Non-Argument Calendar

D.C. Docket Nos. 5:17-cv-00096-WTH-PRL; 5:06-cr-00029-WTH-PRL-1

CARL ST. PREUX,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

(January 23, 2020)

Before GRANT, LUCK and MARCUS, Circuit Judges.

PER CURIAM:

Carl St. Preux appeals the district court's denial of his motion, which he argues is a Federal Rule of Criminal Procedure 60(b) motion, instead of a second or successive 28 U.S.C. § 2255 motion for which he had not obtained permission. On

appeal, St. Preux says that his motion was a proper Rule 60(b) motion because it did not attack the merits of the district court's earlier decision, but rather, argued that the court procedurally erred by applying 21 U.S.C. § 851(e)'s statute of limitations and declining to consider the merits of his claim. After careful review, we affirm.

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Fed. R. Civ. P. 60(b) allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances, including fraud, mistake, and newly discovered evidence. Fed. R. Civ. P. 60(b); Gonzalez v. Crosby, 545 U.S. 524, 528 (2005). Fed. R. Civ. P. 60(b) provides a basis for a party to seek relief from a final judgment in a § 2255 proceeding only to the extent that the rule does not conflict with the limitations on successive motions in the Antiterrorism and Effective Death Penalty Act. See Gonzalez, 545 U.S. at 529–30. To obtain relief under Rule 60(b)(6), a party must show "extraordinary circumstances" justifying reopening a final judgment, and this rarely happens in the habeas context. Id. at 535. A court should treat a motion couched in terms of Rule 60(b) as a successive § 2255 motion if it: (1) "seeks to add a new ground for relief" or (2) "attacks the federal court's previous resolution of a claim on the merits." Id. at 532 (emphasis omitted). When a Rule 60(b) motion qualifies as a second or successive habeas petition, a

district court lacks jurisdiction to consider it absent authorization from us. See 28 U.S.C. § 2255(h).

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As the record reflects, St. Preux was found guilty in 2007 of conspiracy to distribute cocaine and crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and his sentence was enhanced, through 21 U.S.C. § 851(e), based on two prior felony drug convictions, one from March 1995 and one from November 1998. In 2011, St. Preux filed a motion in the district court under 28 U.S.C. § 2255, arguing, among other things, that "he should be re-sentenced because [his 1998] predicate state conviction[,] which was used to enhance his federal sentence to a mandatory term of life imprisonment under 21 U.S.C. § 851[,] has now been dismissed by the state court." St. Preux v. United States, 539 F. App'x 946, 947 (11th Cir. 2013) (unpublished). The district court rejected this claim, on the ground that a defendant cannot challenge a predicate conviction used to enhance his sentence under § 851 if that conviction is more than five years old. On appeal, we affirmed, holding that

"[u]nder the plain language of [§ 851(e)], St. Preux's challenge to the use of his 1998 state conviction as a basis for a federal sentencing enhancement is foreclosed by" the statute's five-year time limitation. Id. at 948.

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We agree with the district court that St. Preux's motion, which he now styles as a Rule 60(b) motion, was a successive § 2255 motion that it had no jurisdiction to consider without permission from this Court. As we've said, a district court should treat a motion couched in terms of Rule 60(b) as a successive § 2255 motion if it "attacks the federal court's previous resolution of a claim on the merits." Gonzalez, 545 F.3d at 532 (emphasis omitted). St. Preux's motion makes clear that he is disputing the district court's application of § 851(e) to enhance his sentence -- he argues that in denying his initial § 2255 motion, the district court "failed to apply the ruling in" Stewart, which, he says, confirmed that he was entitled to relief and

that his present motion was not successive. Further, in his brief in this appeal, St. Preux claims that in ruling on his initial § 2255 motion, the district court applied "the wrong principle" from United States v. Watson, 461 F. App'x 887 (11th Cir. 2012) (unpublished), which held that there are no exceptions to § 851's five-year limitations period for challenging a prior conviction unless the defendant could show that his prior conviction was "presumptively void" or "constitutionally invalid."

As the record reflects, both of St. Preux's arguments -- relying on Stewart and Watson -- are directed at the resolution of the question posed by St. Preux's initial § 2255 motion, which was whether § 851(e), as a legal matter, applied to his habeas proceeding. Notably, these arguments do not address any fraud, factual mistake, newly discovered evidence, or other grounds that would allow St. Preux's motion to fall under Rule 60(b). Gonzalez, 545 U.S. at 528. Thus, St. Preux's motion seeks to attack "the substance of the federal court's resolution of [his] claim on the merits," and is, thus, a successive § 2255 motion rather than a Rule 60(b) motion. Id. at 532.

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district court's decision, and, accordingly, was a proper Rule 60(b) motion. Id. at 535-36. Here, however, a different kind of statute of limitations issue was presented to the district court. In Gonzalez, the AEDPA's statute of limitations had run, thereby precluding the district court from ruling on the merits of the habeas petition at all. Here, St. Preux filed his initial habeas petition within AEDPA's statute of limitations, so the district court was able to reach the merits of his habeas claim that his sentence should not have been enhanced through § 851(e), and determined that St. Preux was not entitled to habeas relief because, based on the time limits provided in § 851(e) itself (and not AEDPA), he could not use § 851 to challenge his 1998 conviction.

Because St. Preux is challenging the merits determination in the earlier AEDPA proceedings that he was not entitled to relief based on § 851 -- and not a procedural defect in those proceedings -- the district court properly construed his motion as a second or successive § 2255 motion. Further, because St. Preux did not seek prior authorization from this Court before filing his motion in the district court, the district court lacked jurisdiction to consider it. See 28 U.S.C. § 2255(h). Thus, the district court did not err in dismissing St. Preux's motion for lack of jurisdiction.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

January 23, 2020

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-14091-DD
Case Style: Carl St. Preux v. USA
District Court Docket No: 5:17-cv-00096-WTH-PRL
Secondary Case Number: 5:06-cr-00029-WTH-PRL-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Bradly Wallace Holland, DD at 404-335-6181.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 17-14091

District Court Docket Nos.
5:17-cv-00096-WTH-PRL; 5:06-cr-00029-WTH-PRL-1

CARL ST. PREUX,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

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

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: January 23, 2020
For the Court: DAVID J. SMITH, Clerk of Court
By: Jeff R. Patch

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

March 24, 2020

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-14091-DD
Case Style: Carl St. Preux v. USA
District Court Docket No: 5:17-cv-00096-WTH-PRL
Secondary Case Number: 5:06-cr-00029-WTH-PRL-1

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Bradly Wallace Holland, DD
Phone #: 404-335-6181

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14091-DD

CARL ST. PREUX,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

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

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: GRANT, LUCK and MARCUS, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ORD-46

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

April 01, 2020

Clerk - Middle District of Florida
U.S. District Court
207 NW 2ND ST
OCALA, FL 34475

Appeal Number: 17-14091-DD
Case Style: Carl St. Preux v. USA
District Court Docket No: 5:17-cv-00096-WTH-PRL
Secondary Case Number: 5:06-cr-00029-WTH-PRL-1

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being forwarded to counsel and pro se parties. A copy of the court's decision was previously forwarded to counsel and pro se parties on the date it was issued.

The enclosed copy of the judgment is hereby issued as mandate of the court. The court's opinion was previously provided on the date of issuance.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Lois Tunstall
Phone #: (404) 335-6191

Enclosure(s)

MDT-1 Letter Issuing Mandate

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 17-14091

District Court Docket Nos.
5:17-cv-00096-WTH-PRL; 5:06-cr-00029-WTH-PRL-1

CARL ST. PREUX,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

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

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: January 23, 2020
For the Court: DAVID J. SMITH, Clerk of Court
By: Jeff R. Patch