Appendix
A - D For

Joseph R Dickey

v.

United States of America

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JOSEPH R. DICKEY, Petitioner-Appellant, versus UNITED STATES OF AMERICA, Respondent-Appellee.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2021 U.S. App. LEXIS 14923
No. 20-12025 Non-Argument Calendar
May 19, 2021, Decided

Notice:

PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Editorial Information: Prior History

{2021 U.S. App. LEXIS 1}Appeal from the United States District Court for the Northern District of Alabama. D.C. Docket Nos. 7:07-cv-08006-CLS-SGC; 7:05-cr-00321-CLS-SGC-1.United States v. Dickey, 2009 U.S. Dist. LEXIS 144648 (N.D. Ala., Mar. 17, 2009)

Disposition:
AFFIRMED.

Counsel JOSEPH R. DICKEY, Petitioner - Appellant, Pro se, MARIANNA, FL.
For UNITED STATES OF AMERICA, Respondent - Appellee: Francesco Valentini, U.S. Department of Justice, Criminal Division, Appellate Section, WASHINGTON, DC; Michael B. Billingsley, U.S. Attorney Service - Northern District of Alabama, U.S. Attorney's Office, BIRMINGHAM, AL.

Judges: Before JILL PRYOR, LUCK, and BLACK, Circuit Judges.

Opinion

PER CURIAM:

Joseph Dickey, a federal prisoner proceeding *pro se*, appeals the district court's *sua sponte* imposition of a pre-filing injunction after his repeated filings that the court construed as impermissible successive 28 U.S.C. § 2255 motions. Dickey asserts the district court violated his due process rights by issuing the pre-filing injunction without giving him notice and an opportunity to respond. Additionally, he appeals the denial and dismissal of two motions he styled as Federal Rule of Civil Procedure 60 motions.1 Dickey contends they were not impermissible successive § 2255 motions but rather presented valid claims of actual innocence and ineffective assistance of § 2255 counsel. After review,2 we affirm.**{2021 U.S. App. LEXIS 2}**

I. DISCUSSION

A. Imposition of Pre-Filing Injunction

"Federal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions." *Procup v. Strickland*, 792 F.2d 1069 1073 (11th Cir. 1986) (en banc). While a court may severely restrict a litigant's filings, it cannot completely foreclose a litigant from any access to the courts. *Id.* at 1074;

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Martin-Trigona v. Shaw, 986 F.2d 1384, 1387 (11th Cir. 1993). When devising methods to curtail the activity of particularly abusive prisoners, however, "courts must carefully observe the fine line between legitimate restraints and an impermissible restriction on a prisoner's constitutional right of access to the courts." *Procup*, 792 F.2d at 1072. An injunction is impermissible when it goes beyond what is sufficient to protect the court from a prisoner's repetitive filings and, considering its exceptions, fails to provide meaningful access to the courts. *See Miller v. Donald*, 541 F.3d 1091, 1098 (11th Cir. 2008) (finding an injunction was overbroad because it was not limited to the areas in which the plaintiff had demonstrated a history of abusive litigation).

We have upheld injunctions barring litigants from future filings unless and until the filings were approved by a judge. *See Copeland v. Green*, 949 F.2d 390, 391 (11th Cir. 1991) (upholding an injunction directing the clerk**{2021 U.S. App. LEXIS 3}** to mark any papers submitted by a frequent litigant as received but not to file the documents unless a judge approved them for filing); *Cofield v. Ala. Pub. Serv. Comm'n*, 936 F.2d 512, 518 (11th Cir. 1991) (finding a pre-filing screening that required plaintiff to send all pleadings to a judge for approval left plaintiff with sufficient access to the courts); *see also Traylor v. City of Atlanta*, 805 F.2d 1420, 1422 (11th Cir. 1986) (upholding an injunction preventing the plaintiff from filing additional complaints against certain defendants based upon a set of factual circumstances that had been litigated and adjudicated in the past).

The district court did not abuse its discretion in fashioning the pre-filing restriction in Dickey's closed § 2255 case. The restriction did not completely foreclose Dickey's access to the courts-he may still file actions outside of this case and may still give proposed filings in this case to the court for a magistrate judge's approval for docketing. *See Martin-Trigona*, 986 F.2d at 1387; *Cofield*, 936 F.2d at 518. And the restriction was properly tailored and limited to the area in which Dickey has demonstrated a history of vexatious litigation-repeated improper attempts to reopen his § 2255 proceedings. *See Miller*, 541 F.3d at 1098; *Copeland*, 949 F.2d at 391.

Further, the pre-filing injunction does not implicate Dickey's due process rights. *See Zipperer v. City of Fort Myers*, 41 F.3d 619, 623 (11th Cir. 1995) ("Procedural due process requires notice and an opportunity**{2021 U.S. App. LEXIS 4}** to be heard before any governmental deprivation of a property or liberty interest."). The court imposed a pre-filing restriction where Dickey still has essentially full access to the courts-he can still file separate actions, without limitation, and can still file in this § 2255 case with approval. Thus, there is no meaningful governmental deprivation that requires notice and an opportunity to be heard. Accordingly, we affirm the prefiling injunction

B. Motions

A district court does not have jurisdiction to review a federal prisoner's successive § 2255 motion unless that motion is first certified by the appropriate court of appeals. 28 U.S.C. §§ 2244(b)(3)(A), 2255(h); *Farris v. United States*, 333 F.3d 1211, 1216 (11th Cir. 2003). A Rule 60(b) motion is a successive § 2255 motion if it seeks to add a new ground for relief or attacks the district court's prior resolution of a claim on the merits, but not when it attacks a defect in the integrity of the § 2255 proceedings. *Gonzalez v. Crosby*, 545 U.S. 524, 531-32, 125 S. Ct. 2641, 162 L. Ed. 2d 480 (2005) (addressing a Rule 60(b) motion in the 28 U.S.C. § 2254 context); *Gilbert v. United States*, 640 F.3d 1293, 1323 (11th Cir. 2011) (en banc) (applying *Gonzalez* in the § 2255 context), *overruled on other grounds by McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc.*, 851 F.3d 1076 (11th Cir. 2017) (en banc). Generally, to attack a defect in the integrity of the § 2255 proceedings, and escape treatment as an impermissibly successive § 2255 motion, the Rule 60(b) motion must allege a fraud on the court or a procedural error that prevented the**{2021 U.S. App. LEXIS 5}** court from reaching the merits of the § 2255 motion. *See Gonzalez*, 545 U.S. at 532 & nn.4-5 (contrasting a challenge to the substance of a ruling on a § 2254 petition with allegations of fraud on the court and erroneous rulings

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on the failure to exhaust, procedural default, and the statute of limitations that prevented a resolution on the merits).

An attack based on the habeas counsel's omissions "ordinarily does not go to the integrity of the proceedings, but in effect asks for a second chance to have the merits determined favorably." *Gonzalez*, 545 U.S. at 532 n.5. A district court is not required to grant an evidentiary hearing in a § 2255 proceeding if the case's records conclusively show the prisoner is not entitled to relief or if his claims are patently frivolous. *Rosin v. United States*, 786 F.3d 873, 877 (11th Cir. 2015).

Dickey's arguments about actual innocence and ineffective assistance of counsel do not involve defects in the integrity of the § 2255 proceedings as contemplated by *Gonzalez* or *Gilbert*. Instead, the contentions in both of Dickey's Rule 60 motions took issue with the court's resolution on the merits in the original § 2255 proceedings. Dickey's actual innocence argument-that the court refused to properly hear him and review his claims of actual innocence in the § 2255 proceedings-ignores the fact the district court**{2021 U.S. App. LEXIS 6}** analyzed his claims of innocence. In fact, the court noted the evidence against Dickey was sufficient and, further, Dickey could not demonstrate a freestanding substantive claim of actual innocence. In other words, the district court concluded the record-including evidence that Dickey submitted-obviated the need to hear from Dickey further or see more purported evidence involving his actual innocence claims. *See* 28 U.S.C. § 2255(b); *Rosin*, 786 F.3d at 877. To challenge the district court's decision not to hear from him further regarding actual innocence, Dickey necessarily would have to challenge the conclusion his claims were without merit. Thus, his challenge regarding actual innocence was substantive and not an attack on some defect in the integrity of the federal habeas proceedings. *See Gonzalez*, 545 U.S. at 532.

Similarly, Dickey's ineffective assistance of § 2255 counsel claim is an attempt to relitigate his claim that his trial attorney was ineffective. While he couches his argument in procedural terms-that the court was precluded from reaching the merits because of some procedural problem or because of the ineffectiveness of his § 2255 counsel-Dickey is simply attacking the district court's resolution of the merits of his ineffective assistance of counsel**{2021 U.S. App. LEXIS 7}** claim. *See Gonzalez*, 545 U.S. at 532 n.5. It is unclear how his § 2255 counsel abandoned his ineffective assistance of trial counsel claim, as Dickey argues, because the district court held an evidentiary hearing about it with testimony from his trial attorneys. And Dickey provides no support for his proposition that a district court is somehow precluded from reaching the merits of an ineffective assistance of counsel claim because of a disagreement between the prisoner and his § 2255 counsel about how to best present that claim. Accordingly, we affirm the district court's orders regarding Dickey's August 9, 2019 and March 12, 2020 Rule 60 motions.

II. CONCLUSION

Because the pre-filing restriction does not foreclose Dickey's access to the courts and it was properly tailored, the district court was within its authority to impose such a restriction. The district court did not err by disposing of the two motions because they were improper attempts to relitigate previous claims challenging the validity of Dickey's underlying criminal convictions. Accordingly, we affirm the district court's orders.

AFFIRMED.

Footnotes

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The relevant motions are Dickey's Rule 60 motion for relief from the judgment denying his original § 2255 motion that he filed on August 9, 2019 and Dickey's motion for relief from his § 2255 judgment because of miscarriage of justice filed on March 12, 2020, in which he cited to various rules of civil procedure, including Rule 60.
2

We review the district court's decision to impose a filing injunction or restriction for an abuse of discretion. *See Miller v. Donald*, 541 F.3d 1091, 1096 (11th Cir. 2008). We review questions of constitutional law *de novo. Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1239 (11th Cir. 2018). We review issues of subject matter jurisdiction *de novo. Williams v. Chatman*, 510 F.3d 1290, 1293 (11th Cir. 2007).

Appendix B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-12025-AA

JOSEPH R. DICKEY,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

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

BEFORE: JILL PRYOR, LUCK, and BLACK, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Appellant Joseph R. Dickey is DENIED.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

JOSEPH R. DICKEY,	]	
	]	
Petitioner,	]	
	]	
v.	]	**Case No. 7:07-cv-08006-CLS-SGC**
	]	
UNITED STATES OF AMERICA,	]	
	]	
Defendant.	]	

ORDER ON PENDINGMOTIONS AND PRE-FILING INJUNCTION FOR ANY FUTURE FILINGS

This habeas case has been closed for nearly ten years. The court denied Mr. Dickey's 28 U.S.C. § 2255 habeas motion on September 30, 2010. (Docs. 82 & 83). The Eleventh Circuit affirmed this court's denial of that habeas motion on August 22, 2011. (Doc. 91). This case is over. But Mr. Dickey continues to file numerous meritless and frivolous motions that waste the court's time and resources.

The court will first address all pending motions. Then, the court will put in place a pre-filing screening requirement to stop Mr. Dickey's rampant meritless filings in this case.

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Pending Motions

Mr. Dickey's current pending motions include two motions for recusal (docs. 157 & 161), a motion to reconsider (doc. 159), and a motion for relief from the § 2255 judgment (doc. 162).

Mr. Dickey asks that Judge Smith recuse himself from the case, but none of the grounds for recusal have merit. Whatever alleged bias Mr. Dickey claims Judge Smith had during the habeas proceedings is of no consequence. This case is over, and the Eleventh Circuit has affirmed this court's ruling on Mr. Dickey's § 2255 motion.

Judge Smith has already denied a previous motion to recuse (doc. 137), and Mr. Dickey's current motions do not present grounds for recusal. So the court DENIES his motions for recusal as meritless (docs. 157 and 161).

Likewise, Mr. Dickey's motion to reconsider a previous denial of a Rule 60 motion lacks merit. The court lacks jurisdiction to decide a purported Rule 60(b) motion for relief from judgment that is actually a successive habeas petition. The court has already dealt with many motions for relief from judgment and motions to reconsider filed by Mr. Dickey. (Docs. 101, 130, 133, 134, 148, & 150). That Mr. Dickey does not agree with those prior rulings carries no weight. To put the matter to rest, the court gives the following reasons for its rulings on these two pending motions.

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In the federal habeas context, Fed. R. Civ. P. 60 provides a *limited* basis for a petitioner to receive relief from a final judgment. *Williams v. Chatman*, 510 F.3d 1290, 1293 (11th Cir. 2007). Rule 60 cannot be used to bypass the restrictions imposed on successive petitions by the Antiterrorism and Effective Death Penalty Act. *Id.* at 1293-94 (citing *Gonzales v. Crosby*, 545 U.S. 524, 529, (2005)). Section 2255(h) of that Act requires that a movant first obtaining certification from the Eleventh Circuit before filing a successive habeas petition.

The Supreme Court explained that a Rule 60 motion should be treated as a successive habeas petition requiring prior certification from the Circuit Court if it (1) "seeks to add a new ground of relief;" or (2) "attacks the federal court's previous resolution of a claim *on the merits.*" *Gonzales*, 545 U.S. at 532 (emphasis added). But if a Rule 60 motion "attacks, not the substance of the federal court's resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings," the motion is not a successive habeas petition. *Id.*

The court has no jurisdiction to decide a successive habeas motion without the movant first obtaining certification from the Eleventh Circuit as required by 28 U.S.C. § 2255(h). Absent such certification, this court must dismiss the motion without prejudice. *See United States v. Holt*, 417 F.3d 1172, 1175 (11th Cir. 2005).

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In this case, Mr. Dickey's Rule 60(b) motion does *not* attack a defect in the integrity of the habeas proceeding. Instead, Mr. Dickey merely disagrees with this court's previous merits determination affirmed by the Eleventh Circuit. No matter how Mr. Dickey titles his motion, his purported Rule 60(b) motion is really a successive habeas motion in which he seeks a second bite at the habeas apple without the proper certification from the Eleventh Circuit.

For all the reasons previously given for denying past Rule 60 motions (docs. 101, 130, 148, 150, 133, & 134) and because Mr. Dickey has not obtained the required certification from the Eleventh Circuit for a second habeas petition, the court has no jurisdiction to decide the motion. So the court DENIES Mr. Dickey's motion to reconsider (doc. 159) and DISMISSES his successive habeas motion (doc. 162) for lack of jurisdiction.

Pre-filing Injunction

To put an end to Mr. Dickey's numerous frivolous and meritless filings in this closed case, the court has the authority to order a pre-filing screening by the Chief Magistrate Judge to review any future filings to determine if they have any merit before the Clerk of Court places those filings on the docket. *See Cofield v. Ala. Public Serv. Comm'n*, 936 F.2d 512, 518 (11th Cir. 1991) (the federal court can limit the filing of frivolous lawsuits on a case-by-case basis if arguable claims

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can move forward). This pre-filing screening gives Mr. Dickey sufficient access to the court but is necessary to prevent his further abuse of the judicial process.

Since the Eleventh Circuit affirmed the court's denial of his § 2255 motion to vacate, Mr. Dickey has filed a plethora of meritless motions and appeals of the denial of those motions: eight "Rule 60(b)" motions (docs. 94, 98, 115, 124, 146, 147, 149, 162); four motions to recuse (docs. 95, 136, 157, 161); five motions to reconsider (docs. 103, 132, 134, 138, 159); a motion to reopen case (doc. 113); a motion for clarification (doc. 152); and four notices of appeal of the denial of these meritless motions (docs. 104, 116, 139, 154).

These filings are repetitive, frivolous, and groundless, and Mr. Dickey's constant filings disrupt the orderly administration of justice because they waste the court's time and resources. The court has no remedy short of a pre-filing injunction to prevent Mr. Dickey's abuse of the judicial process; the pre-filing injunction is the least restrictive alternative available to the court.

So, the court ORDERS as follows:

1. Mr. Dickey is enjoined from filing any document for docketing in this case with the Clerk of Court for the Northern District of Alabama without the prior approval of the court as described below.
2. If Mr. Dickey wishes to file a document in this case, he shall notify the Clerk of Court in writing of the nature of the filing and its legal basis and shall

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include a copy of the proposed filing. The Clerk of Court will promptly deliver the proposed filing to the Chief Magistrate Judge of this court (or any other Magistrate Judge designated by the Chief Magistrate Judge).

3. The Clerk of Court will not place any filing from Mr. Dickey on the docket unless it is accompanied by confirmation from the Chief Magistrate Judge, or another Magistrate Judge delegated by the Chief Magistrate, that the filing has been approved for docketing in this case.
4. Should Mr. Dickey manage to file any document in this case with the court without the required approval despite this Order, the Clerk of Court shall notify the court and is authorized to remove the document from the file and strike references to it.
5. A violation of this Order by Mr. Dickey shall be considered contempt and may be sanctioned accordingly.
6. This Order shall remain in effect until vacated by the court.
7. A copy of this Order shall be delivered to the Clerk of Court.

DONE and ORDERED this 24th day of March, 2020.

Karon O. Bowdre

KARON OWEN BOWDRE
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11417-E

IN RE: JOSEPH DICKEY,

Petitioner.

Application for Leave to File a Second or Successive
Motion to Vacate, Set Aside,
or Correct Sentence, 28 U.S.C. § 2255(h)

Before MARTIN, ROSENBAUM, and JILL PRYOR, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. §§ 2255(h) and 2244(b)(3)(A), Joseph Dickey has filed an application seeking an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his federal sentence, 28 U.S.C. § 2255. Such authorization may be granted only if this Court certifies that the second or successive motion contains a claim involving

> (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
>
> (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h). "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

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Notably, in 2017, we denied two of Dickey's successive applications as barred, in part, by *Baptiste* because he had previously raised his actual-innocence claim and portions of his ineffective-assistance-of-counsel claim in his original § 2255 motion.

In 2019, Dickey filed his most recent successive application seeking permission to raise one claim in a second or successive § 2255 motion. In that application, Dickey argued that we incorrectly decided *Baptiste* and impermissibly applied it to his claims of actual innocence that he had previously raised. We denied that application because it did not rely on a new rule of constitutional law or newly discovered evidence, *Baptiste* barred further review of the actual innocence claim, and Dickey could not challenge *Baptiste* or our denial of his prior applications.

Dickey titled his instant application a "MOTION FOR AN EN BANC CONSIDERATION FOR PERMISSION TO FILE A SECOND/SUCCESIVE 2255." He states that he has previously filed at least three successive applications that were procedurally barred and references unidentified applications that we denied as barred by *Baptiste*. He explains that new evidence supporting his actual innocence claim came to light between the time he filed his initial § 2255 motion—where he made an actual-innocence claim—and when the district court denied it. He requests that we sit *en banc* and overturn *Baptiste* so he can raise his actual-innocence claim with that new evidence, arguing that *Baptiste* is wrong as a matter of law and "is forcing [him] to serve an illegal sentence."

Dickey attached to his application evidence that he contends supports his actual-innocence claim, asserting that the evidence shows he is innocent of at least three of his offenses because the alleged victims were not present on the dates those offenses took place. He states that he seeks

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to bring four claims in a successive § 2255 motion: one claim that the government violated *Brady*[1] by withholding exculpatory evidence from his trial counsel and three claims that trial counsel was ineffective for not seeking exculpatory evidence and for advising him to plead guilty. He concludes by again asking us to hear his motion *en banc* so we can overturn *Baptiste* and review his actual innocence claim.

Dickey does not allege that his claims rely on a new rule of constitutional law, and claims of ineffective assistance of counsel and violations of *Brady* necessarily do not rely on new rules of constitutional law. *See Brady*, 373 U.S. at 83 (rule announced in 1963); *Strickland v. Washington*, 466 U.S. 668 (1984). While he states he wishes to present new evidence, his primary argument—that we should reconsider our previous orders denying his previous successive applications because those orders were based on the legally incorrect decision of *Baptiste*—does not rely on that new evidence. *See id* § 2255(h)(1).

In any event, Dickey's application is barred by *Baptiste* because he has previously raised all the claims he seeks to bring. *See* 28 U.S.C. § 2244(b)(1). By Dickey's own admission, he is barred from raising his actual-innocence claim because he previously raised it in his initial § 2255 motion and in prior successive applications. *See Baptiste*, 828 F.3d at 1339-40. Dickey has also raised his ineffective-assistance-of-counsel claims before. Finally, the basic gravamen of Dickey's *Brady* claim is the same as the malicious-prosecution claim that he raised in his initial § 2255 motion—that the government prosecuted him knowing exculpatory evidence existed. *See Everett*, 797 F.3d at 1288.

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[1] *Brady v. Maryland*, 373 U.S. 83 (1963).

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And as we said in denying Dickey's most recent application, Dickey cannot seek reconsideration of our previous orders denying his prior successive applications seeking permission to raise his actual-innocence claim. *See Baptiste*, 828 F.3d at 1340 (stating that § 2244(b)(3)(E) does not permit "what amounts to a motion for reconsideration under the guise of a separate and purportedly 'new' application"). Nor, as we also said, can Dickey seek an *en banc* hearing or to recall the mandate in *Baptiste* because he is not a party to that case. To the extent that Dickey seeks initial *en banc* hearing on this application, that motion is DENIED.

Accordingly, Dickey's application for leave to file a second or successive § 2255 motion is DISMISSED.

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MARTIN, Circuit Judge, concurring in judgment:

The panel holds that Mr. Dickey's claims are barred by In re Baptiste, 828 F.3d 1337 (11th Cir. 2016), which held that "the federal habeas statute requires us to dismiss a claim that has been presented in a prior application" to file a § 2255 motion. Id. at 1339. I have stated my view that Baptiste has no basis in the text of the habeas statute:

> Baptiste was construing 28 U.S.C. § 2244(b)(1), which says any "claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." Of course, [] § 2255 motions . . . are filed by federal prisoners [and] § 2255 motions are certainly not brought "under section 2254," which governs petitions filed by state prisoners. But the Baptiste panel ruled that even though § 2244(b)(1) does not mention § 2255 motions, it applies to them anyway, since "it would be odd [] if Congress had intended to allow federal prisoners" to do something state prisoners can't do.

In re Clayton, 829 F.3d 1254, 1266 (11th Cir. 2016) (Martin, J., concurring). And

> Baptiste is inconsistent with the statute in a second way. The text of the habeas statute shows that it requires courts to dismiss only claims that were already presented in an actual § 2255 motion, as opposed to a mere request for certification of a successive § 2255 motion. Both § 2244 and § 2254 distinguish between "applications" (which are the § 2254 petitions and § 2255 motions filed in district courts) and "motions" (which are the earlier request for certification filed in a court of appeals). Baptiste assumes that "motion" and "application" mean the same thing, even though Congress carefully distinguished the two. When Congress uses different words in this way, courts must presume those words mean different things.

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In re Anderson, 829 F.3d 1290, 1296 (11th Cir. 2016) (Martin, J., dissenting). My colleagues have articulated other problems with Baptiste. See In re Jones, 830 F.3d 1295, 1297 (11th Cir. 2016) (Rosenbaum and Jill Pryor, J.J., concurring).

I am concerned that Baptiste is blocking relief to prisoners who ask us to take a second look at their case after we got it wrong the first time. Nevertheless, Baptiste is binding precedent in this circuit, so Mr. Dickey will not be allowed to present his claims to a District Court for an examination of whether his convictions are legal.

1. FBI interview with Lola Martin Contained on July 31, 2005 that Child went "two or three times, one Summer" Not 6 as charged

2. Edward's initial statement to the FBI (about on 12-26-02, he stated he "is not aware of Dickey having sexual relations with children (i.e. the alleged victims)

3. Investigators noted (2-7-03) "Eddie provided conflicting statements and other information which has led investigators to believe [redacted] Dickey in [redacted] Dickey's knowledge,

4. Lola Martin testified under oath she told FBI and "others" her grandkids did not go but 3 times on these trips, NOT 6.