

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-11167
Non-Argument Calendar

D.C. Docket No. 1:04-cr-00091-TWT-AJB-1

MELVIN WALKER,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

(August 5, 2021)

Before LAGOA, BRASHER, and BLACK, Circuit Judges.

PER CURIAM:

APPENDIX A

Melvin Walker, a federal prisoner proceeding *pro se*, appeals the district court's denial of his motion for relief from judgment under Rule 60(b) of the Federal Rules of Civil Procedure. The district court determined the motion was an unauthorized second or successive motion to vacate Walker's convictions and sentence under 28 U.S.C. § 2255. Walker argues the district court erred by failing to rule on the merits of his Rule 60(b) motion because it challenged the fairness and integrity of his § 2255 proceedings and not his underlying convictions. After review,¹ we affirm the district court.

A prisoner in federal custody may file a motion to vacate, set aside, or correct his sentence by asserting "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). Only a single § 2255 motion is authorized, and successive attempts at relief are limited. *Stewart v. United States*, 646 F.3d 856, 859 (11th Cir. 2011). To file a second or successive § 2255 motion, a prisoner must first obtain our authorization. 28 U.S.C. § 2255(h). Without our authorization, the district court

¹ We review questions of the district court's subject matter jurisdiction *de novo*. *United States v. Al-Arian*, 514 F.3d 1184, 1189 (11th Cir. 2008). We review district courts' decisions managing their dockets for abuse of discretion. *See Young v. City of Palm Bay, Fla.*, 358 F.3d 859, 863-64 (11th Cir. 2004) (reviewing various district court decisions made in the course of managing its docket for abuse of discretion).

lacks jurisdiction to consider a second or successive § 2255 motion. *Farris v. United States*, 333 F.3d 1211, 1216 (11th Cir. 2003).

Rule 60(b) provides an avenue for a petitioner to seek relief from a final civil judgment on several narrowly defined grounds. Fed. R. Civ. P. 60(b). Rule 60(b) has a limited application in habeas proceedings and may not be used to circumvent the prohibition on filing a successive § 2255 motion without our permission. *See Williams v. Chatman*, 510 F.3d 1290, 1293 (11th Cir. 2007). A Rule 60(b) motion is properly treated 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. *See id.* at 1293-94. A Rule 60(b) motion is not treated as a successive § 2255 motion if it attacks the integrity of the prior federal habeas proceedings, rather than the substance of the court's resolution of the claim on its merits. *See id.* at 1294. 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 allege a procedural error that prevented the court from reaching the merits of the § 2255 motion. *Gonzalez v. Crosby*, 545 U.S. 524, 532 & nn.4-5 (2005).

Under the Rules Governing § 2255 Motions (§ 2255 Rules), once an inmate files his motion, the court conducts a preliminary review of the motion and may decide whether to order the respondent to answer. Rules Governing § 2255

Proceedings for the U.S. District Courts, Rules 4 and 5. If required, the respondent must file its answer within a fixed time, which is determined by the court. *Id.*, Rules 4(b); 5(d).

The Government concedes, and we agree, that the district court erred in denying Walker's Rule 60(b) motion solely on the basis that it lacked jurisdiction to consider it. Walker's first claim attacked the integrity of his prior § 2255 proceedings, specifically that the judgment was void because the court either ruled on an improperly resubmitted § 2255 motion or failed to rule on the motion at all. ✓

See Williams, 510 F.3d at 1294. Thus, Walker's first claim was properly brought in a Rule 60(b) motion, and the district court had jurisdiction to consider it.

Nevertheless, we can affirm on any basis supported by the record, and we conclude Walker's claim that the judgment in his § 2255 proceedings was void lacks merit. *See United States v. Al-Arian*, 514 F.3d 1184, 1189 (11th Cir. 2008) (stating we may affirm for any reason supported by the record, even if not relied upon by the district court). Contrary to Walker's contention, the district court ruled on the merits of Walker's original § 2255 petition. Walker's arguments regarding the district court's "resubmission" of his motion and the Government's delay in responding to his motion challenge the district court's "unquestionable authority" to manage its own docket. *See Smith v. Psychiatric Sols., Inc.*, 750 F.3d 1253, 1262 (11th Cir. 2014) ("District courts have 'unquestionable' authority to

control their own dockets.”). While Walker asserts the district court’s management of his § 2255 motion violated the § 2255 Rules, nothing in those rules required the court to order the Government to respond within a certain period of time, and district courts generally have “broad discretion in deciding how best to manage the cases before them.” *See id.* (quotations omitted). Furthermore, Walker’s argument challenging the clerk’s entry of judgment on his original § 2255 motion is misguided because Federal Rule of Civil Procedure 58(b) requires the clerk to enter a separate judgment when the court denies all relief requested in a § 2255 motion. *See Fed. R. Civ. P.* 58(a), (b)(1)(C) (providing when a court enters an order denying a § 2255 motion the judgment must be set out in a separate document, and that if the court denies all the relief requested, the clerk promptly prepares, signs, and enters judgment in a separate document without waiting for the court’s direction). Thus, we affirm the district court’s denial of the first ground for relief on the basis that Walker’s claim was meritless.

The district court did not err in finding it lacked jurisdiction over the second ground for relief in Walker’s Rule 60(b) motion because it attacked the court’s resolution of his § 2255 motion on the merits. Walker’s second ground complained of fraud during his trial and appeal—not during his § 2255 proceedings—and was not properly raised in a Rule 60(b) motion. *See Gonzalez*, 545 U.S. at 532 & nn.4-5. Accordingly, the district court did not err in dismissing

Walker's second ground for relief for lack of jurisdiction because Walker needed our authorization to bring such a claim. *See Farris*, 333 F.3d at 1216.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-11167-G

MELVIN WALKER,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

Before: GRANT and LUCK, Circuit Judges.

BY THE COURT:

In documents dated and deemed filed on April 1, 2020, Melvin Walker filed a notice of appeal from the district court's March 20, 2020 order denying his motion for reconsideration and a document titled "Defendant's Objections to the Entry of the Order of March 20, 2020" ("Objections"). *See Daniels v. United States*, 809 F.3d 588, 589 (11th Cir. 2015) (stating that under the prison mailbox rule, a *pro se* prisoner's filing is deemed filed on the date he delivered it to prison authorities for mailing that, absent contrary evidence, the filing is presumed to have been delivered to prison authorities on the day he signed it). We construe the government's response to the April 28, 2020 jurisdictional question as containing a motion to hold the appeal in abeyance pending the district court's resolution of Walker's Objections, and we GRANT the construed motion.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

v.

MELVIN WALKER,

Defendant.

CRIMINAL FILE NO.

1:04-CR-91-1-TWT

ORDER

This is a criminal action. It is before the Court on the Defendant's Rule 60(b) Motion [Doc. 370]. Although labeled as a Rule 60(b) motion, the motion in substance is a Motion to Vacate Sentence because it is a challenge to his conviction and incarceration. The Court lacks jurisdiction to consider the motion because the Defendant has not obtained permission from the Court of Appeals to file a successive motion to vacate sentence. The Defendant's Rule 60(b) Motion [Doc. 370] is DENIED.

SO ORDERED, this 23 day of January, 2020.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge

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APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MELVIN WALKER,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent.

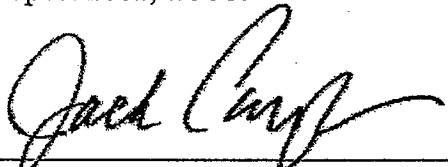
CIVIL CASE NO.
1:08-CV-1911-JTC

CRIMINAL CASE NO.
1:04-CR-91-JTC-1

O R D E R

Pending before the Court is Petitioner's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 [1:04-CR-91, #251]. The Court DIRECTS the Government to file a response to the motion within thirty (30) days of entry of this Order.

SO ORDERED, this 15th day of September, 2008.



JACK T. CAMP
UNITED STATES DISTRICT JUDGE

PETITIONER'S EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MELVIN WALKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

DAVID RAMSEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CIVIL CASE NO.
1:08-CV-1911-JTC

CRIMINAL CASE NO.
1:04-CR-91-JTC

CIVIL CASE NO.
1:08-CV-2759-JTC

CRIMINAL CASE NO.
1:04-CR-91-JTC

ORDER

Pending before the Court is Petitioner Melvin Walker's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 [1:04-CR-91, #251] and Petitioner David Ramsey's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 [1:04-CR-91, #252]. For good cause shown, the Court **GRANTS** Petitioner Ramsey's motion for an extension of time to file a memorandum of law in support of his § 2255 motion [1:04-CR-91, #253]. The Court **DIRECTS** Petitioner Ramsey to file a memorandum of law in support of his § 2255 motion no later than November 3, 2008.

In addition, for good cause shown, the Court **GRANTS** the

PETITIONER'S EXHIBIT "B"

Government's Motion for extension of time to respond to Defendant Walker's § 2255 motion [1:04-CR-91, #257]. The Court **DIRECTS** the Government to file a response to both Petitioner Walker's and Petitioner Ramsey's § 2255 motions no later than December 3, 2008.

SO ORDERED, this 15th day of October, 2008.



JACK T. CAMP
UNITED STATES DISTRICT JUDGE

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
[ATLANTA DIVISION]

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

APR - 8 2009

Melvin D. Walker,
Petitioner,

*

JAMES N. HAYTEN, CLERK
By: *J. Brown*

v.

*

* Criminal No.: 1:04-Cr-00091-JTC-AJB-1

* Civil No.: 1:08-Cv-1911-JTC

*

United States of America.
Respondent.

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NOTICE OF MOTION FOR SUMMARY JUDGMENT

[PETITIONER PROCEEDING PRO-SE]

CERTIFICATE OF SERVICE

I, Melvin D. Walker states on this 27th day of March, 2009,
I placed in the United States mailbox one original and two copies
of this Memorandum addressed to the Clerk of this Court.

Dated: March 27, 2009

Melvin D. Walker
Melvin D. Walker
Reg. No. 55590-019
U.S.P. Lee County
P.O. Box 305
Jonesville, Va. 24263

PETITIONER'S EXHIBIT "C"

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MELVIN WALKER,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

CRIMINAL CASE
NO. 1:04-cr-91-1-JTC

CIVIL ACTION
NO. 1:08-cv-1911-JTC

JUDGMENT

The court, Honorable Jack T. Camp, having denied the motion filed pursuant to
Title 28, United States Code, Section 2255,

Judgment is hereby entered in favor of the respondent against the movant.

Dated at Atlanta, Georgia, this 28th day of January, 2010.

JAMES N. HATTEN,
CLERK OF COURT

By: s/ Sherry Gibbons
Sherry Gibbons
Deputy Clerk

Prepared, Filed, and Entered
in the Clerk's Office
January 28, 2010
James N. Hatten
Clerk of Court

By: s/ Sherry Gibbons
Sherry Gibbons
Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MELVIN WALKER, Movant,	:	MOTION TO VACATE 28 U.S.C. § 2255
v.	:	CRIMINAL INDICTMENT NO. 1:04-CR-0091-JTC-1
UNITED STATES, Respondent.	:	CIVIL FILE NO. 1:08-CV-1911-JTC

ORDER DENYING A CERTIFICATE OF APPEALABILITY

By Order entered on January 28, 2010, this Court denied Movant's 28 U.S.C. § 2255 motion to vacate, set aside, or correct his November 23, 2005, convictions and sentences. (Doc. No. 292.) Pursuant to Rule 11 of the Rules Governing § 2255 Cases, “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. . . . If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2).” Section 2253(c)(2) of Title 28 states that a certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” A substantial showing of the denial of a constitutional right “includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the

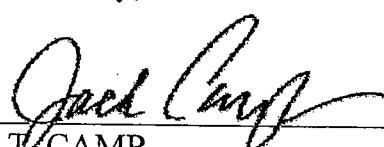
issues presented were adequate to deserve encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473, 483-84 (2000) (internal quotations omitted). A petitioner need not “show he will ultimately succeed on appeal” because “[t]he question is the debatability of the underlying constitutional claim, not the resolution of that debate.” Lamarca v. Sec'y, Dep't of Corr., 568 F.3d 929, 934 (11th Cir. 2009) (citing Miller-El v. Cockrell, 537 U.S. 322, 337 (2003)). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, . . . a certificate of appealability should issue only when the prisoner shows both that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Jimenez v. Quarterman, ___ U.S. ___, ___, 129 S. Ct. 681, 684 n.3 (2009) (quotations omitted, citing Slack, 529 U.S. at 484).

Based on the reasons discussed in this Court’s Order denying relief, this Court now finds that it is not reasonably debatable that Movant (1) failed to show the denial of counsel under the standard enunciated in United States v. Cronic, 466 U.S. 648 (1984); (2) failed to show any prejudice based on counsel’s alleged failure to develop and present an adequate defense theory of the case; (3) failed to show any prejudice

based on counsel's alleged failure to investigate, locate, and produce witnesses to corroborate an alibi defense; (4) procedurally defaulted his claim that the introduction into evidence of his co-conspirator's statements violated his Sixth Amendment confrontation rights and failed to show that counsel was deficient in failing to object to those statements; (5) failed to show prejudice based on counsel's alleged failure to properly advise him regarding his right to testify; and (6 & 7) procedurally defaulted his claims that the government violated his right to a fair trial by knowingly using perjured testimony and impermissibly vouching for government witnesses. (See Doc. No. 292 at 9-26.) Further, it is not reasonably debatable that Movant's allegations of his actual innocence are insufficient to warrant an evidentiary hearing or to overcome his procedural defaults. (See id. at 27-29.) Thus, a COA is not warranted. See Slack, 529 U.S. at 483-84.

IT IS ORDERED that a Certificate of Appealability is **DENIED**.

IT IS SO ORDERED, this 28th day of January, 2010.



JACK T. CAMP
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-11167-GG

MELVIN WALKER,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

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

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

BEFORE: LAGOA, BRASHER, and BLACK, 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 Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

ORD-42

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