

United States Court of Appeals for the Fifth Circuit

No. 20-20172

BARTHOLOMEW ANTONIO GUZMAN,

Petitioner—Appellant,

versus

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice,
Correctional Institutions Division,*

Respondent—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:17-CV-596

ORDER:

Bartholomew Antonio Guzman, Texas prisoner # 1399983, applies for a certificate of appealability (“COA”) to appeal the district court’s denial of his Federal Rule of Civil Procedure 60(b) motion and subsequent Federal Rule of Civil Procedure 59(e) motion. The Rule 60(b) motion sought relief from the judgment denying his earlier petition for habeas corpus, which challenged his conviction for causing serious bodily injury to a child.

Guzman must obtain a COA to proceed on appeal. *See* 28 U.S.C. § 2253(c)(1)(A). To obtain a COA, Guzman must make “a substantial showing of the denial of a constitutional right.” *Id.* § 2253(c)(2); *Slack v.*

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McDaniel, 529 U.S. 473, 483 (2000). Where the district court denies relief on the merits, § 2253(c)(2) requires the applicant to show that reasonable jurists “would find the district court’s assessment of the constitutional claim[] debatable or wrong.” *Slack*, 529 U.S. 473, 484 (2000). Where the district court denies relief on procedural grounds, § 2253(c)(2) requires the applicant to show that jurists of reason would debate *both* the procedural ground *and* the underlying constitutional ground. *Ibid.* And where the district court denies relief under Rule 60(b), “the COA question is . . . whether a reasonable jurist could conclude that the District Court abused its discretion in declining to reopen the judgment.” *Buck v. Davis*, 137 S. Ct. 759, 777 (2017).

Guzman cannot make the requisite showing. *Buck* forecloses his argument that a COA is not required to appeal the denial of a Rule 60(b) motion. And Guzman is incorrect that the district court lacked jurisdiction to deny his habeas claims on the merits before he exhausted them in state court. *See* 28 U.S.C. § 2254(b)(2) (allowing this result).

Accordingly, his motion for a COA is DENIED. His motion for leave to proceed in forma pauperis is DENIED AS MOOT.



ANDREW S. OLDHAM
United States Circuit Judge

David J. Bradley, Clerk

- (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."

Fed. R. Civ. P. 60(b) (2019). Guzman invokes Rule 60(b)(4) and 60(b)(6), arguing that he is entitled to relief because this court's judgment is "void." (Docket Entry No. 38, p. 3).

To succeed on a motion under Rule 60(b)(6) the movant must show that "extraordinary circumstances . . . justify the reopening of a final judgment." In re Edwards, 865 F.3d 197, 205 (5th Cir. 2017) (citing Gonzalez v. Crosby, 125 S. Ct. 2641 (2005)). A judgment may be set aside pursuant to Rule 60(b)(4) if the district court lacked subject matter or personal jurisdiction, or if it acted inconsistent with due process. See Callon Petroleum Co. v. Frontier Ins. Co., 351 F.3d 204, 208 (5th Cir. 2003) (citations omitted). "[B]ecause federal courts regulate the scope of their own jurisdiction, a Rule 60(b)(4) challenge to jurisdiction should be sustained only where there is a clear usurpation of power or total want of jurisdiction." Id. (citations and internal quotation marks omitted).

Guzman reasons that the judgment in this case is void because his Petition contained "both exhausted and unexhausted claims" and should have been dismissed without prejudice. (Docket Entry No. 38, p. 3). Guzman did not raise this argument previously. In fact, Guzman argued in response to the motion for summary judgment that all of his claims were exhausted. (Docket Entry No. 22, pp. 12-16). The court granted summary judgment in favor of the respondent after concluding that two of Guzman's claims were unexhausted and procedurally barred as a result. (Docket Entry No. 24, pp. 24-27). Addressing those unexhausted claims in the alternative, the court concluded further that those claims were without merit. (See id.). Guzman does not demonstrate that the judgment is void for any deficiency in this court's jurisdiction and he does not otherwise show that Rule 60(b)(4) or Rule 60(b)(6) applies.

Accordingly, it is **ORDERED** that Petitioner's Motion for Relief From the Judgment under Rule 60(b) of the Federal Rules of Civil Procedure (Docket Entry No. 38) is **DENIED**. No certificate of appealability will issue from this decision.

The Clerk shall provide a copy of this Order to the parties.

SIGNED at Houston, Texas, on this 20th day of February, 2020.



SIM LAKE
UNITED STATES DISTRICT JUDGE

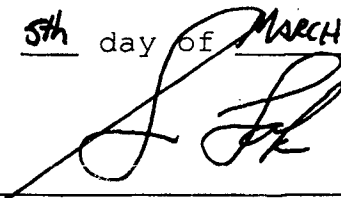
used sparingly." Templet v. HydroChem Inc., 367 F.3d 473, 479 (5th Cir. 2004). "A Rule 59(e) motion must clearly establish either a manifest error of law or fact or must present newly discovered evidence and cannot raise issues that could, and should, have been made before the judgment issued." United Nat'l Ins. Co. v. Mundell Terminal Servs., Inc., 740 F.3d 1022, 1031 (5th Cir. 2014) (citing Advocare Int'l LP v. Horizon Labs., Inc., 524 F.3d 679, 691 (5th Cir. 2008)). Guzman does not establish that he is entitled to relief under Rule 59(e) or any other theory.

Accordingly, the court **ORDERS** as follow:

1. Petitioner's Motion to Reconsider (Docket Entry No. 40) is **DENIED**.
2. No certificate of appealability will issue from this decision.

The Clerk shall provide a copy of this Order to the parties.

SIGNED at Houston, Texas, on this 5th day of MARCH, 2020.



SIM LAKE
SENIOR UNITED STATES DISTRICT JUDGE

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Before HIGGINBOTHAM, SMITH, and OLDHAM, *Circuit Judges.*

PER CURIAM:

A member of this panel previously DENIED appellant's motion for a certificate of appealability and further denied as moot the motion to proceed in forma pauperis. The panel has carefully considered Appellant's motion for reconsideration.

IT IS ORDERED that the motion is DENIED.