

United States Court of Appeals
for the Fifth Circuit



No. 21-40813

A True Copy
Certified order issued Feb 23, 2022

Steph W. Cuyler
Clerk, U.S. Court of Appeals, Fifth Circuit

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JASON MICHAEL EHRET,

Defendant—Appellant.

Application for Certificate of Appealability from the
United States District Court for the Southern District of Texas
USDC No. 2:20-CV-145
USDC No. 2:16-CR-801-1

ORDER:

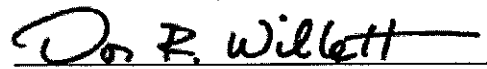
Jason Michael Ehret, federal prisoner #18467-479, seeks a certificate of appealability (COA) to appeal the district court's dismissal of his Federal Rule of Civil Procedure 60(b) motion as an unauthorized second or successive 28 U.S.C. § 2255 motion. Ehret argues that (1) his plea was uncounseled; (2) his plea was unknowing; and (3) he is actually innocent. Further, he asserts that his claims concern structural errors that may be raised at any time "notwithstanding procedural bars."

We may issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see*

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Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). If, as here, the district court denies relief on procedural grounds, a COA should issue if the petitioner demonstrates, at least, “that jurists of reason would find it debatable whether the [motion] 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.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Ehret has not made such a showing. Accordingly, his COA motion is DENIED.

A handwritten signature in black ink, reading "Don R. Willett", with a horizontal line underneath.

DON R. WILLET

United States Circuit Judge

ENTERED

March 02, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA

VS.

JASON MICHAEL EHRET


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CRIMINAL ACTION NO. 2:16-CR-801
(C.A. No. 2:20-CV-145)

FINAL JUDGMENT OF DISMISSAL

Pursuant to the Court's Order (D.E. 161) dismissing Defendant Jason Michael Ehret's motion pursuant to 28 U.S.C. § 2255 (D.E. 150), the Court enters final judgment dismissing this action. Certificate of appealability is denied.

SIGNED and ORDERED this 1st day of March, 2021.


Janis Graham Jack
Senior United States District Judge

ENTERED

October 15, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA

VS.

JASON MICHAEL EHRET

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CRIMINAL ACTION NO. 2:16-CR-801

ORDER

Pending before the Court is Movant Jason Michael Ehret's *pro se* Rule 60(b) motion seeking relief from this Court's dismissal of his second or successive § 2255 motion. (D.E. 167). The motion is DISMISSED as a second or successive § 2255 motion.

I. JURISDICTION

The Movant attempts to invoke the Court's jurisdiction pursuant to Rule 60(b). However, for the reasons discussed below, the Court lacks jurisdiction over Movant's motion.

II. FACTUAL AND PROCEDURAL HISTORY

On November 15, 2016, Movant filed a Memorandum of Plea Agreement, in which he pled guilty to one count of possessing child pornography in violation of 18 U.S.C. §§ 2252A(a)(5)(B) and 2252A(b)(2). (D.E. 24 ¶ 1; D.E. 41 ¶ 2; D.E. 54 ¶ 2). On January 25, 2017, the Court sentenced Movant to 87 months of custody with the Bureau of Prisons, a lifetime supervised release under specific conditions, a \$10,000 fine, and a \$100 special assessment. (D.E. 87 at 96:14–101:24). On January 27, 2017, the Court entered the Judgment. (D.E. 59).

The factual and procedural history of this case is thoroughly laid out in the Court's prior Orders. (D.E. 101 at 1–4; D.E. 103 at 1–2; D.E. 109 at 1–4; D.E. 152 at 1–2; D.E. 161 at 2–4). Most importantly, the following three arguments from Movant's second § 2255 motion were

dismissed as a second or successive § 2255 motion: 1) Ehret's plea was uncounseled, 2) Ehret's plea was unknowing, and 3) Ehret is actually innocent. (D.E. 161 at 5). Movant subsequently requested the Fifth Circuit's approval to raise these same claims in a motion to authorize a successive § 2255 motion. (Case: 21-40469. Document: 00515904641). The Fifth Circuit denied Movant's motion. (D.E. 166). Movant's instant motion was filed September 7, 2021, approximately 1 month later.

III. DISCUSSION

A movant is required to seek, and acquire, the approval of the Fifth Circuit before filing a successive § 2255 motion before this Court. *Tolliver v. Dobre*, 211 F.3d 876, 877 (5th Cir. 2000); 28 U.S.C. § 2244(b)(3)(A). A movant bringing a Rule 60(b) motion may run afoul of the prohibition on second or successive § 2255 motions. *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005) (post-judgment motion pursuant to Rule 60(b) may be construed as second or successive § 2254); *United States v. Williams*, 274 Fed.Appx. 346, 347 (5th Cir.2008) (applying *Gonzalez* to § 2255 motions). It is only when a Rule 60(b) 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," that it does not raise a second or successive claim. *Gonzalez*, 524 U.S. at 532. Any other claim pursuant to either rule must be considered second or successive. *Id.*


In the instant Rule 60(b) motion, Movant claims that 1) his plea was uncounseled, 2) his plea was unknowing, and 3) that he is actually innocent. (D.E. 167). The Fifth Circuit reviewed and denied these exact claims in Movant's motion to authorize a successive § 2255 motion. (D.E. 166). Therefore, the Court construes the instant motion as a successive § 2255 motion and because the Fifth Circuit did not authorize Movant to file the instant successive § 2255 motion,

the Court lacks jurisdiction to consider it. *United States v. Hernandez*, 708 F.3d 680, 681 (5th Cir. 2013).

IV. CONCLUSION

For the foregoing reasons, Movant's instant motion (D.E. 167) is DISMISSED.

SIGNED and ORDERED this 15th day of October, 2021.



Janis Graham Jack
Senior United States District Judge

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