

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-10095-P

ALBERT HOLLAND, JR.,

Petitioner - Appellant,

versus

STATE OF FLORIDA,

Respondent - Appellee.

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

ORDER:

Appellant's motion for a certificate of appealability is DENIED.

/s/ Robin S. Rosenbaum
UNITED STATES CIRCUIT JUDGE

" Appendix A "

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.call.uscourts.gov

June 08, 2022

Albert Holland Jr.
Union CI - Inmate Legal Mail
PO BOX 1000
RAIFORD, FL 32083

Appeal Number: 22-10095-P
Case Style: Albert Holland, Jr. v. State of Florida
District Court Docket No: 1:06-cv-20182-PAS

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Any pending motions are now rendered moot in light of the attached order.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: David L. Thomas
Phone #: (404) 335-6171

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

" Appendix A "

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-10095-P

ALBERT HOLLAND, JR.,

Petitioner - Appellant,

versus

STATE OF FLORIDA,

Respondent - Appellee.

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

Before: WILLIAM PRYOR, Chief Judge, ROSENBAUM and BRASHER, Circuit Judges.

BY THE COURT:

Appellant's motion for reconsideration of single judge's order denying motion for a certificate of appealability entered on June 8, 2022, is DENIED.

" Appendix B "

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

July 28, 2022

Albert Holland Jr.
Union CI - Inmate Legal Mail
PO BOX 1000
RAIFORD, FL 32083

Appeal Number: 22-10095-P
Case Style: Albert Holland, Jr. v. State of Florida
District Court Docket No: 1:06-cv-20182-PAS

Electronic Filing

All counsel must file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Although not required, non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing are available on the Court's website.

The enclosed order has been ENTERED.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: David L. Thomas
Phone #: (404) 335-6171

MOT-2 Notice of Court Action

" Appendix B "

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 06-CIV-20182-SEITZ

ALBERT HOLLAND,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ORDER DENYING PETITIONER'S
MOTION FOR RELIEF FROM JUDGEMENT

THIS MATTER is before the Court on Petitioner Albert Holland's *pro se* Motion for Relief from Judgment [DE 156]. In the Motion, he seeks to vacate certain Florida criminal convictions against him. The Respondent State of Florida has filed a related Motion to Strike *Pro Se* Habeas Petition and Deny *Pro Se* Motion to Replace Habeas Counsel [DE 165]. The parties have responded to the Motions [DE 168, 172, 174, 175]. Because Petitioner's Rule 60(b) Motion is, in substance, an unauthorized successive petition for habeas relief, Petitioner's Motion is denied for lack of jurisdiction, and Respondent's related Motion is denied as moot.

I. Background

Relevant to the outstanding Motions,¹ Albert Holland is currently on death row in Florida following a 1996 conviction for first-degree murder. Holland was also

¹ The extensive factual and procedural background of this case have been detailed in a prior order. See Docket Entry 132 at 2-6.

"Appendix C"

convicted in that instance of armed robbery, attempted sexual battery, and attempted first-degree murder.

Following his convictions, Holland ultimately filed an Amended Petition for Writ of Habeas Corpus by a Person in State Custody [DE 117], in which he presented eight claims for relief pursuant to 28 U.S.C. § 2254. First, he contended that his right to self-representation was violated, contrary to the Sixth Amendment. Second, Holland claimed that the trial court erred in admitting expert mental health testimony that violated his rights to remain silent, to due process, and to a fair trial. Third, he argued that the admission of a certain videotape as evidence was not harmless error, as the Florida Supreme Court had found. Fourth, he claimed that his statements to law enforcement should have been suppressed. Fifth, Holland argued that the trial court had insufficient evidence to find premeditation in his actions. Sixth, he argued that his appellate counsel in front of the Florida Supreme Court was prejudicially deficient. Seventh, he contended that he was denied effective assistance of counsel at the trial court as well, during the guilt phase of his capital case. Finally, Holland claimed that the trial court's failure to consider non-statutory mitigation in deciding his sentence violated the Eighth Amendment.

After appeal and remand, Holland's petition for habeas relief was denied when the Court determined that Holland was not entitled to relief, based on the substance of his claims [DE 153]. Almost six years later, the instant Motions followed.

II. Legal Standard

As a threshold matter, a district court must investigate its jurisdiction. A state prisoner wishing to file a second or successive federal habeas petition must, first, move the court of appeals for an order authorizing the district court to consider it. *See* 28 U.S.C. § 2244(b)(3)(A); *Tompkins v. Sec'y, Fla. Dep't of Corr.*, 557 F.3d 1257, 1259 (11th Cir. 2009) (citation omitted). Without such authorization, the district court lacks jurisdiction. *Farris v. United States*, 333 F.3d 1211, 1216 (11th Cir. 2003).

A motion framed as pursuant to Federal Rule of Civil Procedure 60(b) does not escape this requirement.² A claim for relief from a state court conviction pursuant to Rule 60(b) is treated as a habeas claim under 28 U.S.C. § 2254. Although by a different legal avenue, such a claim is “in substance...at least similar enough [to § 2254] that failing to subject it to the same requirements would be ‘inconsistent with’ the statute” because it would have the effect of circumventing the requirements of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, 110 Stat 1214 (1996) (“AEDPA”). *Gonzalez v. Crosby*, 545 U.S. 524, 531 (2005) (citation omitted). Such a motion is considered a second or successive petition if it seeks to add a new basis for habeas relief or attacks the district court’s previous resolution of a habeas claim on its merits. *Id.* at 532. A Rule 60(b) motion should not be considered a successive habeas petition, however, if the motion attacks “some defect in the integrity of the federal habeas proceedings.” *Id.*

² A court may relieve a party from a final judgment on various grounds, including that “the judgment is void.” Fed. R. Civ. P. 60(b)(4).

III. Discussion

A. Parties' Positions

In his Motion for Relief from Judgment [DE 156], Petitioner Albert Holland seeks to vacate some of his Florida convictions. He argues that the trial court lacked jurisdiction to try him on allegations of armed robbery and attempted first degree murder with a deadly weapon because the statutes applicable at the time of the incident were not properly described in his indictment. Because the indictment was deficient, he continues, it is void, as is any trial on it. Holland asks that this court declare that the state trial court was without subject matter jurisdiction, based upon the above arguments, and vacate his convictions for armed robbery and attempted first-degree murder with a deadly weapon.

The State responded to the Petitioner's Motion, styling its filing as both a motion to strike and a motion to deny [DE 165]. The State's filing, first, seeks to dispense with Petitioner's *pro se* Motion because he is represented by counsel. However, the Court had already appointed counsel and ordered counsel to file a response [DE 158].³ Thus, this ground is irrelevant to consideration of the Motion.

The State also argues that Petitioner's Motion is an unauthorized successive habeas petition and is untimely. The State argues that Holland's Motion, although ostensibly seeking relief pursuant to Federal Rule of Civil Procedure 60(b)(4), is, in

³ Holland's counsel noted that Holland's claims appear to be challenges to his original state court convictions, which may or may not have been raised yet in state court. Counsel does not take a position on the claims in Holland's Motion, but suggests that any denial should be without prejudice for Holland to seek relief in state court [DE 168]. Holland subsequently filed notice of his displeasure with counsel and moved to proceed *pro se*, which the Court granted [DE 173].

fact, an unauthorized second attempt to vacate judgment pursuant to 28 U.S.C. § 2254. Use of Rule 60 for this purpose is prohibited, the State adds. Even if Holland's Motion were proper under Rule 60, the State continues, it is untimely. Second, the State claims that, as a successive habeas petition, the Motion is untimely because it does not relate back to matters in the original petition, and is otherwise beyond the time limits for a successive petition set by the AEDPA.

In his Reply [DE 174 and 175],⁴ Defendant emphasizes that he is not attempting to raise a new claim for relief under 28 U.S.C. § 2254. Thus, he states that it is not an attempt at a success habeas petition. Instead, Defendant claims that the sufficiency of the state court indictment is an attack on subject matter jurisdiction, which is appropriate at any time, without limitation, under Rule 60(b)(4).

B. Basis for Court's Determination

Although he claims to be attacking a defect in the federal proceedings, Petitioner Albert Holland's briefs belie this claim. Liberally construing his Motion, the judgment he seeks to void under Rule 60(b)(4) is that of the trial court convicting him based upon what he believes to be a deficient indictment that raises constitutional issues. Moreover, he has already had one federal petition for habeas relief decided on the merits, and Holland's instant claim regarding his indictment was not raised in his earlier petition. Thus, whether framed as a Rule 60 motion or

⁴ The documents at Docket Entries 174 and 175 appear to be identical – the former handwritten, and the latter typed.

a habeas petition, and whether his Motion has any merit, it amounts to a second habeas petition under 28 U.S.C. § 2254.⁵

As a result, he must first seek authorization from the Eleventh Circuit before the Court may consider his successive habeas petition. The recently decided *Picket v. United States* offers a useful example. No. 20-13149, 2021 WL 3521062 (11th Cir. Aug. 11, 2021). The Eleventh Circuit held that the petitioner's claim of innocence due to a substantive change in law was not an attack on the federal habeas proceedings and, thus, operated as a successive habeas petition. In contrast, the court also held that petitioner's claim that the district court considering his habeas relief failed to hold an evidentiary hearing was an attack on the federal proceedings and, thus, appropriate under Rule 60(b). *Id.* at *2-3. Here, as Holland's claims only attack the validity of the indictment in the state criminal trial, this Court must deny the motion for lack of jurisdiction, and does not reach the merits of Holland's claims.

IV. Certificate of Appealability

The denial of a Rule 60(b) motion is a final order in a habeas corpus proceeding and requires a Certificate of Appealability before an appeal may proceed. *See* 28 U.S.C. § 2253(c)(1); *Gonzalez v. Sec'y for the Dep't of Corr.*, 366 F.3d 1253, 1267-68 (11th Cir.2004) (en banc). Upon consideration of the record as a whole, a certificate of appealability shall not issue. Therefore, it is

ORDERED THAT

⁵ Because the Court denies the Motion on this basis, the State's request to brief the merits of Petitioner's Motion, if necessary, is denied as moot.

1. Petitioner Albert Holland's Motion for Relief from Judgment [DE 156] is DENIED, WITHOUT PREJUDICE, to any effort to seek relief in state court.

2. Respondent's Motion to Strike *Pro Se* Habeas Petition and Deny *Pro Se* Motion to Replace Habeas Counsel [DE 165] is DENIED AS MOOT.

DONE AND ORDERED in Miami, Florida, this 28th day of September, 2021.



PATRICIA A. SEITZ
UNITED STATES SENIOR DISTRICT JUDGE