

## APPENDIX

App. A.1- Final Decision by Court of Appeals for the Fifth Circuit

App. A.2- United States District Court Last Order

App. A.3-United States District Court order prompting appeal

App. A.4-Notice of Appeal by Blair

App. A. 5-Objection to USDC Last Order while Appeal sitting

APP. A. 1

United States Court of Appeals  
for the Fifth Circuit

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No. 22-10239

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UNITED STATES OF AMERICA,

United States Court of Appeals  
Fifth Circuit

**FILED**

October 6, 2022

Lyle W. Cayce  
Clerk

*Plaintiff—Appellee,*

*versus*

NICHOLAS LEE BLAIR,

*Defendant—Appellant.*

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Application for Certificate of Appealability from the  
United States District Court for the Northern District of Texas  
USDC Nos. 5:13-CR-100, 5:17-CV-280

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ORDER:

Nicholas Lee Blair, Texas prisoner # 1941929, moves for a certificate of appealability (COA) to appeal the dismissal of his Federal Rule of Civil Procedure 60(b) motion, in which he purported to challenge the earlier dismissal, as time barred, of his 28 U.S.C. § 2255 motion challenging his conviction for production of child pornography. The district court construed Blair's Rule 60(b) motion as an unauthorized successive § 2255 motion and dismissed it for lack of jurisdiction. Blair also moves for leave to proceed in forma pauperis (IFP) on appeal.

To obtain a COA to challenge the denial of his Rule 60(b) motion, Blair must make "a substantial showing of the denial of a constitutional

No. 22-10239

right" by demonstrating that reasonable jurists could disagree with the district court's resolution of his constitutional claims or that the issues presented were adequate to deserve encouragement to proceed further. 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). To meet that standard, he must show that "a jurist of reason could conclude that the district court's denial of [the Rule 60(b)] motion was an abuse of discretion." *Hernandez v. Thaler*, 630 F.3d 420, 428 (5th Cir. 2011).

Blair fails to make the requisite showing. Accordingly, the motion for a COA is DENIED. The court offers no opinion on Blair's ability to pursue relief under 28 U.S.C. § 2254 with respect to his state conviction. Blair's motion to proceed IFP on appeal is DENIED AS MOOT.

/s/ *Leslie H. Southwick*

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LESLIE H. SOUTHWICK  
*United States Circuit Judge*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

UNITED STATES OF AMERICA )  
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v. )  
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NICHOLAS LEE BLAIR ) CRIMINAL NO. 5:13-CR-100-C

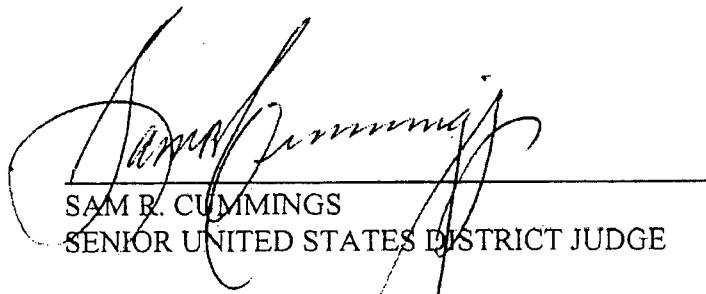
ORDER

The Court notes that Defendant's Motion Under Rule 60 was denied in the above-styled and -numbered criminal action and no certificate of appealability was entered. To the extent that Blair's Motion should have been considered a civil matter under 28 U.S.C. § 2255, the Court now denies a certificate of appealability.<sup>1</sup>

Pursuant to Rule 22 of the Federal Rules of Appellate Procedure and 28 U.S.C. § 2253(c), this Court finds that a certificate of appealability is **DENIED**. Specifically, Petitioner has failed to show that a reasonable jurist would find: (1) this Court's "assessment of the constitutional claims debatable or wrong," or (2) "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

SO ORDERED.

Dated September 19, 2022.

  
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SAM R. CUMMINGS  
SENIOR UNITED STATES DISTRICT JUDGE

<sup>1</sup>If Blair intended his Rule 60 Motion to be a successive motion filed under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, the United States Court of Appeals for the Fifth Circuit must first determine whether he shall be permitted to file a successive motion under Section 2255.

**APP. A.3**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

UNITED STATES OF AMERICA )  
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 v. )  
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 NICHOLAS LEE BLAIR ) CRIMINAL NO. 5:13-CR-100-C

## ORDER

For the reasons stated in the Government's Consolidate Response in Opposition, the Court **ORDERS** that Defendant's Motion under Rule 60, Motion in the Alternative, and Motion for Leave of Court to Admit Evidence be **DENIED**.

SO ORDERED.

Dated February 15, 2022.

SAM R. CUMMINGS  
SENIOR UNITED STATES DISTRICT JUDGE

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APP. A. 4

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

CLERK U.S. DISTRICT COURT  
NORTHERN DIST. OF TX  
LUBBOCK DIVISION

NICHOLAS LEE BLAIR  
v.  
UNITED STATES OF AMERICA

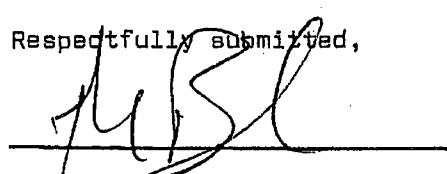
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) CRIMINAL NO. 5:13-CR-100-C  
2022 MAR -4 AM 8:14  
DEPUTY CLERK 

NOTICE OF APPEAL

Appellant, NICHOLAS LEE BLAIR, hereby gives notice of appeal to the order of the United States District Court for the Northern District of Texas, Lubbock Division, made on February 15, 2022, in regards to the Motions filed concerning the above numbered cause.

Dated: February 25, 2022

Respectfully submitted,



CERTIFICATE OF SERVICE

I certify that notice has been sent by copy of this document to Assistant United States Attorney, Jeffrey R. Haag, at 1205 Texas Avenue, Suite 700, Lubbock, Texas 79401 and filed with the United States District Court for the Northern District of Texas, Lubbock Division, at 1205 Texas Avenue, Room 209, Lubbock, Texas 79401. Sent February 25, 2022.



APP. A. 5

United States of America,

Plaintiff-Appellee

v.

Nicholas Lee Blair,

Defendant-Appellant

OBJECTION TO THE DISTRICT COURT'S  
DENIAL OF CERTIFICATE OF APPEALABILITY  
IN THE FORM OF QUO WARRANTO

Blair was denied a Certificate of Appealability by Judge Sam Cummings for the Northern District of Texas, United States District Court, Lubbock Division on September 19, 2022. The denial comes months after Cummings denial of Blair's Rule 60(b) Motion intending to restart the clock to Blair's previously filed application under 28 U.S.C. § 2255 that was construed as a second motion.

The denial by Cummings to Blair's Rule 60(b), although disputed by Blair and the basis for his appeal under the case number above, was justified by Cummings as his lack of jurisdiction to rule without this Circuit's certification under 28 U.S.C. § 2244(b)(1).

Cummings now denies Blair a Certificate of Appealability, *sua sponte*, after the allotted time to apply for such in that Court. Cummings further justifies this denial on the basis that Blair's Rule 60(b) under Fed. R. of Civ. P. as a first filing of an application under 28 U.S.C. § 2255. Cummings cites Slack v. McDaniel, 529 U.S. 473, 484 (2000). If Cummings is to rely on this authority then he must provide Blair with the chance to withdraw his Rule 60(b).

As Cummings claim now is that the Rule 60(b) motion was Blair's first attempt at an application for habeas corpus petition. See Slack v. McDaniel, 529 U.S. 473, 485-87 (2000), and Castro v. United States, 540 U.S. 375, 377 (2003).

In any event, the new denial is a complete contradiction to the first and changes the Court's own construing while what could only be an attempt to prevent Blair remedy.

Blair reiterates here that his attempt is to restart the clock to supporting new evidence and not to file a new or successive motion. Considering thus, to make a denial order construing Blair's motion as either an original or successive/second motion prevents Blair from making his claims in full, which he is bound to do when filing for habeas application. See Rules Governing § 2255. Also, the contention of Blair in his Rule 60(b) is that he has been prevented from making full claims and new evidence suggests the intent of the State to keep Blair from doing so.

It is unclear why the District Court decided to deny Blair a Certificate of Appealability months after deciding it did not have jurisdiction over Blair's case, but to interject now seems to lean towards bias to also deny Blair a redress of grievance, unconstitutionally. Blair is also unaware how such a denial *sua sponte*, after the fact and after claiming lack of jurisdiction is not an attempt to confuse Blair as to what remedy or vehicle he is supposed to utilize in the eyes of the Court. Or even if Cummings is making attempt at 'fixing' issues unresolved in his prior denial, he himself shows to be confused as his reasonings and cites are contradictory to each other. This renders fair judgment impossible and requires recusal. 28 U.S.C. § 144 and Liteky v. U.S., 510 U.S. 540, 556 (1994). Blair requests from this Court the reasoning on which the District Court decided to make such a ruling so much later and

contrary to its original ruling and how Blair is supposed to posture his appeal in the midst of such confusion and by what authority can a court claim lack of jurisdiction, allow the case to be appealed by proper procedure to the claims Blair made and Blair's belief in his stance of his Rule 60(b) motion not being a second motion under § 2254, then attempt to reassert jurisdiction after the Notice of Appeal has been filed and no action from the Court of Appeals for the Fifth Circuit has commenced.

If Blair is not allowed to use a Rule 60(b) to 'restart the clock' and if he is barred from doing so, Blair has yet to be given the authority that states he cannot use his Rule 60(b) for such position. Now, that is the crux of his appeal. As was his attempt directly with his Rule 60(b) initially. A denial of certificate of appealability does not concern such matters.

But the confusion begins with the misconstruing of Blair's Rule 60(b) which, to Blair's knowledge and research (vastly limited in comparison to the Court's) there is no precedent arising from the use of a Rule 60(b) to 'restart the clock' to previously made claims. There is also no procedural bar to utilizing the restarting of the clock for new evidence or the overcoming an unconstitutional barrier to filing created by the State to existing claims of an earlier § 2255 that the claims have not changed nor the case been adjudicated on the merits. Cummings has only added to the confusion. The objection in nature of Quo Warranto is an attempt to obviate such confusion.

#### Conclusion.

Blair requests that this Court provide him with clear instruction as to how to proceed. To what end can Blair use remedies he is constitutionally allowed, and what authority is used to justify the acts of the district court. Blair requests that this Court recuse Cummings from any future case of Blair in the

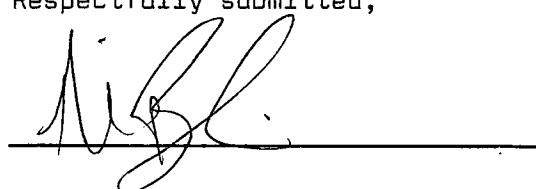
same instance or comprising from the same facts as his denial to Blair for a certificate of appealability was temporally unjustified in regards to his citation to authority of 28 U.S.C. § 2253(c) and pursuant to Rule 22 of the Federal Rules of Appellate Procedure and Slack, *supra*. Also, his denial seems disingenuine to the purpose of Blair's filing and the denial's near grab at jurisdiction when it has been this Court's prerogative since March 4, 2022, and precisely because of the District Court's first denial to entertain Blair's Rule 60(b) motion, shows the confusion to this case and the intent of which Blair has filed. Blair, here, also would like to point out that his original claims have still never been heard and its seems Judge Cummings intent on keeping Blair from that possibility. This is a point made in Blair's brief on appeal at this Court under this case. The allowance of such intervention at this juncture, alone, is beyond the scope of the laws cited by Judge Cummings or his authority once an appeal has been accepted by this Court and docketed.

Blair asks this Court to strike the denial from record and proceed with the intent of Blair's motion as the district court is divested from control over those aspects of the case involved in the appeal. See Marrese v. Am. Acad. of Orthopaedic Surgeons, 470 U.S. 373, 379 (1985). Blair's appeal is based on his belief that he can use a Rule 60(b) motion under Fed. R. Civ. P. to 'restart the clock' as to new evidence which supports his initial claims made under an unadjudicated § 2255 application considering the claims show the possibility of suppression of evidence, as agreed in the State habeas by the State actors who Blair alleged suppressed the evidence, which new evidence supports the State's claim of why the State did not divulge evidence nor investigated Blair's claims despite ministerial duty and also never answered to Blair's claims of official misconduct and operating under color of law, as being false statements by the State.

that show to have been false statements. The State habeas court relied on these false statements in their dismissal of Blair's State habeas application. The claims Blair made were valid and constitutional enough for the State district court to order affidavit to resolve what was seen as constitutional issues. So, if Judge Cummings intent was to prevent Blair the constitutional claim of his unadjudicated habeas, which he does not state, or his Rule 60(b) motion by claiming them unconstitutional, the State has already disagreed. And they were the subject of Blair's claims. But again, Blair simply wants to know if a Rule 60(b) can 'restart the clock' and overcome an unconstitutional State impediment when new evidence ties those claims to an initial habeas corpus application shown to have merit, at least by the State which provided all of the evidence the government used in Blair's federal conviction, that have never been adjudicated. Judge Cummings newest denial, in that vein, seems superfluous. And cumulatively, bias and antagonistic. Blair requests this Court to strike from the record the denial of the district court, have the justification of such denial by Judge Cummings explained and recuse Judge Cummings from future proceedings involving Blair for the same instance and/or facts.

Respectfully submitted,

DATED: November 6, 2011

A handwritten signature in black ink, appearing to read "N. S. Blair", is written over a horizontal line. The signature is fluid and cursive.