

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 11, 2022

Lyle W. Cayce
Clerk

No. 22-10038

ANTHONY ROHLF,

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 Northern District of Texas
USDC No. 4:20-CV-200

Before STEWART, DENNIS, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Anthony Rohlf, Texas prisoner # 2089530, was convicted of aggravated assault with a deadly weapon. He now moves for a certificate of appealability (COA) to appeal the district court's denial of his Federal Rule of Civil Procedure 60(b) motion, in which he alleged the judgment denying

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 22-10038

his 28 U.S.C. § 2254 petition was the result of fraud, misrepresentation, and misconduct by his trial counsel and the State's attorney.

The district court rejected Rohlf's Rule 60(b) motion on the merits. However, the court had no jurisdiction to consider his motion because it constituted a successive § 2254 application, and Rohlf had not obtained authorization to proceed from this court. *See Gonzalez v. Crosby*, 545 U.S. 524, 530-32 (2005); *see also Adams v. Thaler*, 679 F.3d 312, 321-22 (5th Cir. 2012); 28 U.S.C. § 2244(b)(3)(A). Although Rohlf purported to rely on fraud on the court pursuant to Rule 60(b)(3), the underlying claim was raised in his § 2254 petition. Accordingly, Rohlf's request for a COA with respect to the denial of Rule 60(b) relief is DENIED as moot, the district court's order denying relief on the Rule 60(b) motion is VACATED, and the case is REMANDED with instructions to dismiss the motion for lack of jurisdiction. *See Davis v. Sumlin*, 999 F.3d 278, 279-80 (5th Cir. 2021).

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 11, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 22-10038 Rohlfs v. Lumpkin
USDC No. 4:20-CV-200

Enclosed is a copy of the court's decision. The court has entered judgment under **FED. R. APP. P. 36**. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through **41**, and **5TH CIR. R. 35**, **39**, and **41** govern costs, rehearings, and mandates. **5TH CIR. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following **FED. R. APP. P. 40** and **5TH CIR. R. 35** for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

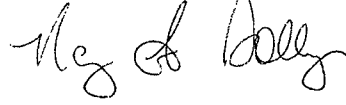
Direct Criminal Appeals. **5TH CIR. R. 41** provides that a motion for a stay of mandate under **FED. R. APP. P. 41** will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under **FED. R. APP. P. 41**. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in cursive script, appearing to read "Lyle W. Cayce".

By: _____
Nancy F. Dolly, Deputy Clerk

Enclosure(s)

Mr. Anthony Rohlf
Mr. Nathan Tadema

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ANTHONY ROHLF,

Petitioner,

v.

BOBBY LUMPKIN,
DIRECTOR, TDCJ-CID,

Respondent.

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Civil Action No. 4:20-cv-200-O

ORDER

Before the Court is the motion filed by Petitioner, Anthony Rohlf, on January 13, 2022, objecting to the Court's denial of his petition filed pursuant to 28 U.S.C. § 2254, and asking for relief from the judgment under Federal Rule of Civil Procedure 60(b). *See* Motion for Relief from Judgment Rule 60(b), ECF No. 45. Having considered the motion, record, and applicable law, the Court **denies** Petitioner's motion for the reasons previously set forth in its March 5, 2021 denial of his Section 2254 petition. *See* Amended Opinion and Order, ECF No. 36. Further, pursuant to 28 U.S.C. § 2253(c), for the reasons discussed by the Court in the March 5, 2021 Amended Opinion and Order, as well as by the appellate court in its December 15, 2021 denial of Petitioner's application for a certificate of appealability in Case No. 21-10196 (*see* ECF No. 44), a certificate of appealability from this Order is **denied**.

SO ORDERED this 18th day of January, 2022.


Reed O'Connor
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**ANTHONY ROHLF,
TDCJ No. 02089530,**

Petitioner,

v.

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

Respondent.

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Civil Action No. 4:20-cv-200-O

ORDER

The Court's order (ECF No. 48) denying Petitioner's Motion for Relief from Judgment filed pursuant to Rule 60(b), Federal Rules of Civil Procedure, is hereby **VACATED**. The **Clerk of Court** shall reopen this case for further proceedings.

SO ORDERED this 12th day of August, 2022.


Reed O'Connor
UNITED STATES DISTRICT JUDGE

United States Court of Appeals
for the Fifth Circuit

No. 22-10038

ANTHONY ROHLF,

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 Northern District of Texas
USDC No. 4:20-CV-200

ON PETITION FOR REHEARING
EN BANC

Before STEWART, DENNIS, and WILLETT, *Circuit Judges.*

PER CURIAM:

Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

October 18, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 22-10038 Rohlf v. Lumpkin
USDC No. 4:20-CV-200

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Renee McDonough

By: _____
Renee S. McDonough, Deputy Clerk
504-310-7673

Mr. Anthony Rohlf
Mr. Nathan Tadema

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