

NOT RECOMMENDED FOR PUBLICATION

No. 21-3689

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Jul 6, 2022

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

V.

MICHAEL LEE GORDON,

Defendant-Appellant.

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ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF
OHIO

ORDER

Before: BOGGS, THAPAR, and NALBANDIAN, Circuit Judges.

This matter is before the court upon consideration of the government's motion to dismiss the appeal.

In 1999, Michael Lee Gordon was convicted of multiple counts of violating the Hobbs Act, 18 U.S.C. § 1951, and of using a firearm during each of the Hobbs Act crimes, in violation of 18 U.S.C. § 924(c). The district court sentenced him to a total of 1,651 months of imprisonment and three years of supervised release, and we affirmed. *United States v. Gordon*, No. 99-3679, 2000 WL 1785905 (6th Cir. Nov. 22, 2000). In 2001, Gordon filed his first motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255, and he has since filed several unsuccessful motions for this court's authorization of a second or successive § 2255 motion to vacate.

In July 2021, Gordon filed three motions in the district court: a Rule 60(b) motion to “reopen” his § 2255 proceedings based on the Supreme Court’s decision in *Rosemond v. United States*, 572 U.S. 65 (2014); a motion to dismiss the 18 U.S.C. § 924(c) counts on the basis of *Rosemond*; and a second Rule 60(b) motion to “reopen” his § 2255 case to assert additional claims for prosecutorial misconduct, judicial misconduct, and ineffective assistance of counsel. On July 20, 2021, the district court construed all three of these motions as second or successive § 2255 motions and transferred them to this court. *See In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) (per curiam). On July 26, 2021, Gordon filed a notice of appeal from the July 20, 2021, transfer order. That appeal was docketed in this court as appeal No. 21-3689, the current appeal.

This court lacks jurisdiction over appeal No. 21-3689. An order transferring a motion to an appellate court for consideration as a second or successive motion to vacate is not appealable. *See Howard v. United States*, 533 F.3d 472, 474 (6th Cir. 2008). We recently addressed the propriety of the transfer order and concluded that the transfer was proper. *See In re Gordon*, No. 21-3660 (6th Cir. Nov. 23, 2021) (order).

Accordingly, the motion to dismiss is **GRANTED**.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MICHAEL LEE GORDON,

Petitioner,

v.

CASE NO. 2:16-CV-589

CRIM. NO. 2:97-CR-167

JUDGE JAMES L. GRAHAM

Magistrate Judge Elizabeth P. Deavers

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

Petitioner has filed a Motion for Relief from Judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure seeking to reopen the Motion to Vacate under 28 U.S.C. § 2255 to challenge his convictions under 28 U.S.C. § 924 for insufficiency of the evidence (Doc. 608); a Motion to Dismiss his § 924(c) convictions as constitutionally insufficient (Doc. 609); and a Motion Pursuant to Rule 60(b) that has been docketed as a Motion to Vacate under 28 U.S.C. § 2255, again requesting to reopen § 2255 proceedings to assert additional claims, including prosecutorial and judicial misconduct and ineffective assistance of counsel. (Doc. 611). Petitioner also has filed a Motion to Disclose Grand Jury Transcripts (Doc. 610). For the reasons that follow, Petitioner's motions pursuant to Rule 60(b) and Motion to Vacate under 28 U.S.C. 3355 (Docs. 608, 609, 611) hereby are **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit as successive.

Petitioner's Motion to Disclose Grand Jury Transcripts (Doc. 610) is **DENIED**.

On September 30, 2002, the Court dismissed Petitioner's Motion to Vacate under 28 U.S.C. § 2255. (Doc. 267.) Since that time, Petitioner has filed repeated successive § 2255 motions and Rule 60(b) motions seeking to assert additional new grounds for relief or to reopen

Cir. 2012). “Unless the court of appeals has authorized a second or successive motion, a district court sitting in the Sixth Circuit must transfer the motion to the Sixth Circuit Court of Appeals.” *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) (*per curiam*).

Plainly, Petitioner’s current motions constitute successive motions to vacate within the meaning of 28 U.S.C. §§ 2244(b)(3)(A), 2255(h). This Court must therefore transfer those motions to the Sixth Circuit for authorization to consider it. *See In re Franklin*, 950 F.3d 909 (6th Cir. 2020).

Further, Petitioner has failed to show a particularized need for disclosure of grand jury transcripts under Rule 6(e) of the Federal Rules of Criminal Procedure. *See United States v. Arrick*, No. 18-3479, 2018 WL 8344588, at *1 (6th Cir. Nov. 28, 2018) (“A litigant’s ‘burden of establishing particularized need is necessarily heavy.’”) (citation omitted).

In accordance with the foregoing, Petitioner’s motions pursuant to Rule 60(b) and § 2255 (Docs. 608, 609, 611) are hereby **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit as successive.

Petitioner’s Motion to Disclose Grand Jury Transcripts (Doc. 610) is **DENIED**.

IT IS SO ORDERED.

Date: July 20, 2021

s/James L. Graham
JAMES L. GRAHAM
UNITED STATES DISTRICT JUDGE