Appendex A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-3700

Daniel Louis Jackson

Petitioner - Appellant

v.

United States of America

Respondent - Appellee

Appeal from U.S. District Court for the Northern District of Iowa - Eastern
(6:19-cv-02017-LTS)

JUDGMENT

Before COLLOTON, GRUENDER, and KELLY, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

The motion to proceed in forma pauperis is denied as moot.

January 18, 2024

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-3700

Daniel Louis Jackson

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the Northern District of Iowa - Eastern
(6:19-cv-02017-LTS)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

March 08, 2024

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Appendix C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

DANIEL LOUIS JACKSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. C19-2017-LTS
(Crim. No. CR16-2057-LTS)

ORDER

I. INTRODUCTION

This matter is before me on three *pro se* filings by plaintiff Daniel Jackson. First, Jackson filed a motion (Doc. 39) to "reopen" my previous ruling under Rule 60(b)(1). Second, Jackson mailed a second motion (Doc. 45) to "reopen," this time under Rule 60(b)(6), which the Clerk's office filed as a supplement to the first motion to reopen. Third, Jackson filed a motion (Doc. 49) for a "decision" regarding his previous filings. Jackson sent in several other documents (Docs. 40, 42, 43, 45, 46 and 47) that the Clerk's office variously filed as supplements to his motion (Doc. 39) or as correspondence.[1]

Jackson's substantive motions request relief from my prior ruling (Doc. 26) which denied his 28 U.S.C. § 2255 motion. He raises two issues: (1) I committed legal error when I reviewed documents outside of the arrest warrant in ruling on his § 2255 claim; and (2) I committed legal error when I did not review the affidavit allegedly supporting probable cause to search Jackson's Facebook account.

[1] I note that Jackson filed two other motions which were docketed in his criminal case. Those will be considered in a separate order.

II. PROCEDURAL HISTORY

Jackson filed his § 2255 action on March 20, 2019. *See* Doc. 1. His claims alleged ineffective assistance of trial counsel and prosecutorial misconduct during his trial. Doc. 1-1 at 3. On August 12, 2021, I denied Jacksons' § 2255 motion and declined to issue a certificate of appealability. Doc. 26 at 36. The Eighth Circuit Court of Appeals also denied his application for a certificate of appealability. Doc. 35. On March 17, 2022, Jackson's petitions for a panel rehearing and rehearing en banc were denied. Doc. 36. Jackson then filed a petition for a writ (Doc. 38) of certiorari, which was denied October 3, 2022. Doc. 41 at 2.

On August 11, 2022,[2] Jackson submitted his first motion (Doc. 39) to "reopen" my previous § 2255 ruling under Rule 60(b)(1). Doc. 39 at 2. Jackson filed two documents (Docs. 42, 43) supplementing this motion. On February 21, 2023, Jackson filed his second motion (Doc. 45) to "reopen" under Rule 60(b)(6). In support of that motion, Jackson filed several documents (Docs. 46, 47) supplementing his motion. On October 16, 2023, Jackson filed his motion for "decision." Doc. 49.

III. RELEVANT FACTS

Jackson's § 2255 claims arose from his 2017 conviction in this court (Crim. No. CR 16-2057-LTS) on four counts related to an armed bank robbery. Doc. 26 at 1-2. Following a three-day jury trial, Jackson was convicted of armed bank robbery, aiding and abetting the use, carrying and brandishing of a firearm during a crime of violence, conspiracy to commit armed robbery and conspiracy to use, carry and brandish a firearm during a crime of violence. Crim. Doc. 133.

Following the denial of Jackson's post-trial motions and direct appeal (Crim. Docs. 142, 206), Jackson filed a pro se § 2255 motion to vacate, set aside or correct his

[2] Jackson's motion to reopen was postmarked on August 11, 2022, but was not filed until August 15, 2022. Doc. 39 at 6.

sentence. Doc. 1. In his motion, Jackson alleged six grounds of ineffective assistance of counsel and one allegation of prosecutorial misconduct. Doc. 1-1 at 3. Jackson asserted four claims of ineffective assistance of his trial counsel, Jill Johnston. Doc. 1-1 at 4, 8, 10, 12, 13. Among his claims of ineffective assistance of counsel, Jackson alleged that Johnston was ineffective for (1) failing to challenge the basis of Sheriff John LeClere's arrest warrant (Doc. 1-1 at 4-5) and (2) "for not raising the issue on evidence gained pursuant to an unconstitutional search" of his Facebook messages and videos (Doc. 1-1 at 8). After considering Jackson's § 2255 motion on its merits, I denied all of his claims. Doc. 26 at 36.

IV. APPLICABLE STANDARDS

A. Rule 60(b)

Jackson moves to reopen my order denying relief of his § 2255 claims based on Federal Rule of Civil Procedure 60(b), which states:

> (b) **Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). Subsection (c) limits motions made pursuant to grounds (1)-(3) to "no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1). Further, all Rule 60(b) motions "must be made

within a reasonable time." *Id.* Jackson relies on subsections (1) and (6) to argue my judgment should be reopened.

"Rule 60(b) provides extraordinary relief in exceptional circumstances." *Sellers v. Mineta*, 350 F.3d 706, 716 (8th Cir. 2003). It is "not intended as a substitute for a direct appeal from an erroneous judgment." *Spinar v. South Dakota Bd. of Regents*, 796 F.2d 1060, 1062 (8th Cir. 1986) (cleaned up). The Eighth Circuit has strictly upheld the one-year limitation on motions brought under Rule 60(b)(1)-(3), including when a Rule 60(b)(6) motion is substantively the same as a (b)(1)-(3) motion. *Middleton v. McDonald*, 388 F.3d 614, 616-17 (8th Cir. 2004). Simply labeling a motion as a Rule 60(b)(6) motion, when it is actually alleging any of the circumstances covered by (b)(1)-(3), cannot avoid the one-year limitation. *Id.* This time period runs from the date a court enters the judgment the movant is attempting to reopen. *Kennedy Bldg. Associates v. CBS Corp.*, 576 U.S. 872, 879-80 (8th Cir. 2009).

The Supreme Court recently clarified which claims are governed by Rule 60(b)(1). *Kemp v. United States*, 596 U.S. 528, 530 (2022). The Court concluded, "based on the text, structure, and history of Rule 60(b), that a judge's errors of law are indeed mistakes under Rule 60(b)(1)." *Id.* (cleaned up). Further, "Rule 60(b)(1) covers all mistakes of law made by a judge." *Id.* at 534.

Under Rule 60(b)(6), a court may grant relief from final judgments for "any other reason that justifies relief." *Rouse v. United States*, 14 F.4th 795, 799 (8th Cir. 2021). A petitioner must bring a Rule 60(b) motion "within a reasonable time" and must present "extraordinary circumstances" to justify relief. *Id.* (citing *Davis v. Kelley*, 855 F.3d 833, 835 (8th Cir. 2017)). Rule 60(b)(6) extraordinary circumstances "rarely occur in the habeas context." *Rouse*, 14 F.4th at 799 (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005)).

B. Successive § 2255 Claims

Rule 60(b) applies to habeas proceedings to the extent it is not inconsistent with the Anti-Terrorism and Effective Death Penalty Act (AEDPA). *Ward v. Norris*, 577 F.3d 925, 932 (8th Cir. 2009); *see also* 28 U.S.C. § 2255; Fed. R. Civ. P. 81(a)(4). A successive § 2255 motion requires certification by a court of appeals before filing. *See* 28 U.S.C. § 2244(b)(3)(A). "It is well-established that inmates may not bypass the authorization requirement of 28 U.S.C. § 2244(b)(3) for filing a second or successive § 2254 or § 2255 action by purporting to invoke some other procedure." *United States v. Lambros*, 404 F.3d 1034, 1036 (8th Cir. 2005); *see also Boyd v. United States*, 304 F.3d 813, 814 (8th Cir. 2002) (per curiam) (if a Rule 60(b) motion is actually a successive habeas petition, the district court should deny it for failure to obtain authorization from the court of appeals, or in its discretion, transfer the motion to the court of appeals).

Rule 60(b) creates an exception to the finality of a district court's judgment in a habeas proceeding. *See Ward*, 577 F.3d at 933. District courts, when presented with a purported Rule 60(b) motion following the dismissal of a habeas petitioner, should conduct a brief initial inquiry to determine whether the allegations in the Rule 60(b) motion in fact amount to a second or successive collateral attack under 28 U.S.C. § 2255. *See Boyd*, 304 F.3d at 814.

A Rule 60(b) motion seeking relief from the denial of a § 2255 motion and raising claims of a postconviction relief nature should be construed as a successive § 2255 motion. *See Guinan v. Delo*, 5 F.3d 313, 316-17 (8th Cir. 1993). A Rule 60(b) motion is a second or successive habeas corpus application if it contains a claim. *Ward*, 577 F.3d at 933. When no "claim" is presented, there is no basis for contending that the Rule 60(b) motion should be treated like a habeas application. *Gonzalez*, 545 U.S. at 533. A "claim" is defined as an attack on the "federal court's previous resolution of the claim on the merits." *See Ward*, 577 F.3d at 933. "On the merits" refers "to a determination that there exist or do not exist grounds entitling a petitioner to habeas

corpus relief. . . ." *Id.* When a Rule 60(b) motion presents a claim, it must be treated as a second or successive habeas petition under AEDPA. *Id.*

No claim is presented if the motion attacks "some defect in the integrity of the federal habeas proceedings." *See Gonzalez*, 545 U.S. at 532. "Likewise, a motion does not attack a federal court's determination on the merits if it 'merely asserts that a previous ruling which precluded a merits determination was in error-for example, a denial for such reasons as failure to exhaust, procedural default, or statute of limitations bar.'" *Ward*, 577 F.3d at 933 (quoting *Gonzalez*, 545 U.S. at 530). "The Supreme Court has 'note[d] that an attack based on the movant's own conduct, or his habeas counsel's omissions, ordinarily does not go to the integrity of the proceedings, but in effect asks for a second chance to have the merits determined favorably.'" *Id.* (quoting *Gonzalez*, 545 U.S. at 532 n.5). Although an assertion of ineffective assistance of habeas counsel may be characterized as a defect in the integrity of the habeas proceeding, it ultimately seeks to assert or reassert substantive claims with the assistance of new counsel. *Id.* at 932. Moreover, AEDPA specifically prohibits such grounds for relief. *Id.*

V. ANALYSIS

My order denying Jackson § 2255 relief was filed on August 12, 2021. Doc. 26. Although Jackson's Rule 60(b)(1) motion (Doc. 39) was not filed until August 15, 2022, it was postmarked August 11, 2022. *See* Doc. 39 at 6. Because Jackson deposited his Rule 60(b)(1) motion in the prison mail system before the one-year filing deadline imposed under Rule 60(c)(1), his motion is timely. *See Sorensen v. Tidwell*, 114 Fed. App'x 266, 267 (8th Cir. 2004) (applying the prison mailbox rule to find § 1983 petitioner had timely filed her amended complaint).

Jackson asserts two bases for relief under Rule 60(b). First, Jackson argues he is entitled to relief under Rule 60(b)(1) because I made a mistake of law when I considered information outside of the four corners of Sheriff LeClere's affidavit to find probable cause existed for his arrest. Doc. 39 at 2-4. Within this argument, Jackson asserts: (1)

I erred in relying on *Gerstein v. Pugh*, 420 U.S. 103 (1975), because the facts of that case were dissimilar to his case (Doc. 39 at 4), (2) I erred when I ignored his § 2255 argument that Sheriff LeClere's affidavit was bare bones (Doc. 42 at 2) and (3) I erred in ruling on his § 2255 claim by not finding the state magistrate judge's determination of probable cause was a conclusory assertion (Doc. 43 at 3).

Second, Jackson argues he is entitled to relief under Rule 60(b)(6) because I did not conduct a full review on the merits of whether there was probable cause to search his Facebook account. Doc. 45 at 1. Jackson argues that my failure to review Agent Pearson's affidavit when ruling on his § 2255 ineffective assistance of counsel claim is an extraordinary and compelling circumstance to grant relief under Rule 60(b)(6). *Id.* at 4. In support of his argument, Jackson attached an affidavit (Doc. 46 at 1), his February 2023 correspondence with Jill Johnston (Doc. 46 at 3-4), the search warrant issued for the search of his Facebook accounts (Doc. 46 at 5) and a supplemental argument that my judgment was void under Rule 60(b)(4) (Doc. 47 at 2).

Conducting the required initial inquiry, I find that Jackson's Rule 60(b) motions are second or successive collateral attacks under § 2255. *See Boyd*, 304 F.3d at 814. First, although Jackson's motion (Doc. 39) purports to assert a basis of "procedural error," it actually attacks my previous ruling on the merits of his ineffective assistance of counsel claim. *See Gonzalez*, 545 U.S. at 532 n.4 (defining "on the merits" in the Rule 60(b) context to mean "a determination that there exist or do not exist grounds entitling a petitioner to habeas corpus relief"). Jackson contests my determination on the merits that his trial counsel's failure to challenge the probable cause basis was not deficient performance. Distinctly, Jackson's motion does not attack a "defect in the integrity of the federal habeas proceeding" but attacks the outcome of my determination on the merits. *See Ward*, 577 F.3d at 933 (quoting *Gonzalez*, 545 U.S. at 532 n.4) (listing such defects as "a denial for such reasons as failure to exhaust, procedural default, or statute-of-limitations bar").

Second, Jackson's Rule 60(b)(6) motion also fails as a second or successive attack under § 2255. *See Rouse*, 14 F.4th at 800 ("The requirement in § 2244(b)(3) that courts of appeals first certify compliance with § 2244(b)(2) before a district court can accept a motion for second or successive relief applies to Rule 60(b)(6) motions that include second or successive claims."). Jackson argues I committed legal error by failing to conduct "a full review on the merits on whether there was probable cause to search his Facebook." Doc. 45 at 1. The substance of Jackson's motion attacks my previous merits determination that his trial counsel was not ineffective for declining to challenge the issuance of the Facebook search warrant (Doc. 26 at 14). Jackson's claim therefore fails as a second or successive § 2255 claim. Moreover, I find Jackson's claim does not present an "extraordinary circumstance" warranting relief under Rule 60(b)(6). *See Davis*, 855 F.3d at 833.

VI. CERTIFICATE OF APPEALABILITY

The certificate of appealability requirement set forth in 28 U.S.C. § 2253(c)(1) applies to the denial of a Rule 60(b) motion seeking to reopen a habeas case. *Lambros*, 404 F.3d at 1036; *see also Zeitvogel v. Bowersox*, 13 F.3d 56 (8th Cir. 1996) (per curiam) (published order denying certificate in appeal from denial of Rule 60(b) motion seeking relief from order denying habeas petition), *cert. denied*, 519 U.S. 1036 (1996). A district court possesses the authority to issue certificates of appealability under § 2253(c) and Federal Rule of Appellate Procedure 22(b). *See Tiedeman v. Benson*, 122 F.3d 518, 522 (8th Cir. 1997). Under § 2253(c)(2), a certificate of appealability may issue only if a movant has made a substantial showing of the denial of a constitutional right. *See Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); *Tiedeman*, 122 F.3d at 523. To make such a showing, the issues must be debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings. *See Miller-El*, 537 U.S. at 335–36 (reiterating standard).

IT IS SO ORDERED.

DATED this 27th day of November, 2023.

Leonard T. Strand, Chief Judge