

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

Appendix A

Order, U.S. Court of Appeals for the Ninth Circuit (May 9, 2024).....	1a
-----------------------------------------------------------------------	----

Appendix B

Order Denying Motion for Relief U.S. District Court for the Central District of California (January 17, 2024).....	9a
--------------------------------------------------------------------------------------------------------------------	----

OTHER DOCUMENTS

Appendix C

First Timely Notice of Appeal U.S. District Court for the Central District of California (January 18, 2024).....	2a
------------------------------------------------------------------------------------------------------------------	----

Appendix D

Second Timely Notice of Appeal U.S. District Court for the Central District of California (January 17, 2024).....	5a
-------------------------------------------------------------------------------------------------------------------	----

Appendix E

Motion for Relief from Void Judgment- A Violation of Due Process Pursuant to Federal Rule of Civil Procedure 60(b)(4) (November 21, 2023)	12a
-------------------------------------------------------------------------------------------------------------------------------------------------	-----

Appendix F

Petitioner's First Declaration Submitted in Support of the Rule 60(b)(4) Motion (December 28, 2023)	18a
-----------------------------------------------------------------------------------------------------------	-----

APPENDIX TABLE OF CONTENTS (Cont.)

Appendix G	
Petitioner's Second Declaration Submitted in Support of the Rule 60(b)(4) Motion After the Letter Notice from R. Smith Deputy Clerk (January 21, 2024).....	22a

**APPENDIX A
ORDER, U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
(MAY 9, 2024)**

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DAMON BALAR COOK,

Petitioner-Appellant,

v.

GEORGE M. GALAZA, WARDEN,

Respondent-Appellee.

No. 24-630

**D.C. No. 2:00-cv-08569-JFW-AGR
Central Dist. of California
Los Angeles**

Before: BADE and VANDYKE, Circuit Judges.

Appellant's correspondence to the court (Docket Entry Nos. 13-15) is construed as a motion for reconsideration. So construed, the motion for reconsideration is denied. *See* 9th Cir. R. 27-10

No further filings will be entertained in this closed case.

APPENDIX B
FIRST TIMELY NOTICE OF APPEAL FILED IN
THE U.S. DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA
(JANUARY 18, 2024)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAMON BALAR COOK,

Petitioner,

v.

GEORGE M. GALAZA, WARDEN,

Respondent.

Case No. 2:00cv-08569

**FIRST TIMELY NOTICE OF APPEAL
AND REQUEST FOR A CERTIFICATE
OF APPEALABILITY**

To Clerk of the District Court

Please take notice that I, Damon B. Cook do hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final order denying Petitioner's Federal Rule of Civil Procedure Rule 60(b)(4) Motion to set aside void judgment – A violation of due process. *See Simer v. Rios* (7th Cir. 1981) 661 F.2d 655, 663, Fn.18

Any factor rendering the judgment void. *See Gonzalez v. Crosby*, 545 U.S. at 534.

Here, the 2254 judgment is void for the purposes of Rule 60(b)(4) because it was entered in a manner inconsistent with due process.

See Fiore v. White (2001) 531 U.S. 225, 226, 228-229.

See Juan H. v. Allen (9th Cir. 2005) 408 F.3d 1262, 1279.

See Rayner 2023 U.S. App. Lexis 2526.

See United Student Aid Funds, Inc. v. Espinosa (2010) 559 U.S. 260, 271.

I, Damon B. Cook, the Petitioner in this case was prejudicially denied an opportunity to be heard on his insufficiency of the evidence of force claim on its true merits in accord with due process of law during the proceedings culminating in the underlying judgment, that is, the Federal District Court failed and refused to address the true merits of the Petitioner Damon B. Cook's insufficiency of the evidence of force claim when there was no substantial evidence of the force element presented to the jury on this force element and the United States Supreme court had been published *Fiore v. White* (2001) 531 U.S. 225, 226-229.

Before the underlying judgment in this case on August 21, 2002 which the Federal District Court was bound to follow it, but did not.

See the U.S. District Court for the Northern District of California followed *Fiore v. White* (2001) 531 U.S. 225, 226-229.

App.4a

In *Allen v. Woodford* (2003) 2003 U.S. Dist. Lexis 19474 at pp. 23-25

See *Constr. Drilling Inc v. Chusid* (3d Cir. 2005) 131 Fed.Appx. 366, 372-373.

The 2002 District Court judgment is void.

APPENDIX C
SECOND TIMELY NOTICE OF APPEAL FILED
IN THE U.S. DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA
(JANUARY 17, 2024)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAMON BALAR COOK,

Petitioner,

v.

GEORGE M. GALAZA, WARDEN,

Respondent.

Case No. 2:00cv00-08569

**SECOND TIMELY NOTICE OF APPEAL
AND REQUEST FOR A CERTIFICATE
OF APPEALABILITY ON REVIEW OF
THE DISTRICT COURT'S DENIAL OF
THE RULE 60(B)(4) MOTION AND
PETITIONER'S DECLARATION**

See Export Group v. Reef Indus. Inc.
(9th Cir. 1995) *De Novo Review* 54 F.3d 1466, 1469

To clerk of the District Court order Jan. 17, 2024.
Please take notice that I, Damon B. Cook do hereby
appeal to the United States Court of Appeals for the
Ninth Circuit from the final order denying Petitioner's

Federal Rule of Civil Procedure Rule 60(b)(4) motion to set aside void judgment—A violation of due process.

See Simer v. Rios (7th Cir. 1981) 661 F.2d 655, 663, Fn.18.

Any factor rendering the judgment void.

See Gonzalez v. Crosby, 545 U.S. at 534.

Here, the 2254 judgment is void for the purposes of Rule 60(b)(4) because it was entered in a manner inconsistent with due process.

Insufficient Evidence of the Force Element

See Fiore v. White (2001) 531 U.S. 225, 226, 228-229.

See Juan H. v. Allen (9th Cir. 2005) 408 F.3d 1262, 1279.

See United Student Aid Funds, Inc. v. Espinosa (2010) 559 U.S. 260, 271.

I, Damon B. Cook, the Petitioner in this case was prejudicially denied an opportunity to be heard on his insufficiency of the evidence of force claim on its true merits in accord with due process of law during the proceedings culminating in the underlying judgment, that is, the Federal District Court failed and refused to address the true merits of the Petitioner Damon B. Cook's insufficiency of the evidence of force claim when there was no substantial evidence of the force presented to the jury on this element and the United States Supreme Court had been published *Fiore v. White* (2001) 531 U.S. 225, 226-229 before the underlying judgment in this case on August 21, 2002 which the Federal District Court was bound to follow it, but did not.

See the U.S. District court for the Northern District of California followed *Fiore v. White* (2001) 531 U.S. 225, 228-229.

In *Allen v. Woodford* (2003) 2003 U.S. Dist. Lexis 19474 at pp. 23-25.

See Constr. Drilling Inc v. Chusid (3d Cir. 2005) 131 Fed.Appx. 366, 372-373.

The 2002 District Court judgment is VOID.

This is the response to the district court's order denying the motion for relief from void judgment under Federal Rule of Civil Procedure 60(b)(4) prepared by Shannon Reilly on January 17, 2024. Please take notice that there is a big legal difference in having a full and fair opportunity to litigate and having a petitioner's constitutional claims heard by the court on true merits as I will explain below further. I Damon Cook the Petitioner in this case did have a full and fair opportunity to litigate. This means, I lawfully and properly brought my constitutional claims of insufficiency of evidence of force claim before the Federal District Court; and the 5th and 14th amendments of the United States Constitution require the Federal District Court and the 9th Circuit Court of Appeals to address and hear my constitutional claim of insufficiency of evidence of force claim on its true merits. This means that the Federal District Court and the 9th Circuit Court of appeals were required to apply the relevant law of *Jackson v. Virginia*, 443 U.S. 307, 316, 324, fn.16 (1979) and *In re Winship*, 397 U.S 358, 364, 365-368 (1970).

To the facts of Petitioner Damon Cook's insufficiency of the evidence of force claim which the Federal District Court DID NOT DO but rejected and refused

to address and hear and refused to apply the relevant law of *Jackson v. Virginia* and *In Re Winship* to the facts of Damon Cook's insufficiency of the evidence of force, thereby making the underlying judgment in this case VOID under Federal Rule of Civil Procedure 60(b)(4); and a violation of due process of law because Petitioner Damon Cook was prejudicially denied an opportunity to be heard on his insufficiency of the evidence of force claim and the District Court entered judgment inconsistent with due process of law.

See Frank v. Mangum, 237 U.S. 309, 340 (1915).

See Powell v. Alabama, 287 U.S. 45, 69 (1932).

/s/ Damon B. Cook

Dated: Jan 29, 2024

APPENDIX D
ORDER DENYING MOTION FOR RELIEF
U.S. DISTRICT COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA
(JANUARY 17, 2024)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES-GENERAL

DAMON B. COOK,

Petitioner,

v.

GEORGE M. GALAZA, WARDEN,

Respondent.

Case No. 2:00cv00-08569-JFW(AGR)

Before: John F. WALTER,
United States District Judge

Shannon Reilly, Deputy Clerk

**Proceedings: (In Chambers) ORDER DENYING
MOTION FOR RELIEF FROM VOID JUDG-
MENT PURSUANT TO FED. R. CIV. P. 60(b)(4)
(Dkt. No. 146)**

This closed habeas case is currently on
appeal in Ninth Circuit Case No. 23-55067.

Petitioner has filed a motion for relief from the judgment entered in this matter on August 21, 2002 as void pursuant to Fed. R. Civ. P. 60(b)(4). (Dkt. No. 146; *see* Dkt. Nos. 85-86)

A judgment is void if it is entered by a court that lacks even an arguable basis for jurisdiction or if it is premised on a violation of due process that deprived the party of notice or an opportunity to be heard. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010); *Meadows v. Dominican Republic*, 817 F.2d 517, 522-24 (9th Cir. 1987).

This court has jurisdiction over the Petition for Writ of Habeas Corpus in this case, and Petitioner does not contend otherwise. Petitioner sought federal habeas relief from a state criminal judgment in the Superior Court for the County of Riverside. On November 14, 1997, the jury found Petitioner guilty of one count of forcible rape and one count of forcible copulation. On December 17, 1997, Petitioner was sentenced to 38 years in state prison. (Report and Recommendation at 1-2, Dkt. No. 76) On July 18, 2000, Petitioner filed a Petition for Writ of Habeas Corpus in the Eastern District of California, which transferred the habeas action to this court. (*Id.* at 3) The County of Riverside is in the Central District of California. 28 U.S.C. § 84. The habeas action is properly in this court. 28 U.S.C. § 2241(d).

Petitioner argues that there is a violation of due process because he contends there was insufficient evidence of the force element to support his conviction. In the context of Rule 60(b)(4), due process requires that a party have notice of the action and an opportunity to be heard. *United Student Aid*, 559 U.S. at 272. Petitioner had actual notice of this action

because he filed it. The docket reflects that Petitioner had ample opportunity to be heard. Petitioner filed the petition and supporting documents. After Respondent filed an Answer, Petitioner filed a reply and additional documents. The magistrate judge issued his report and recommendation on June 25, 2002. (Dkt. No. 76) Petitioner filed objections and additional documents. (Dkt. Nos. 79, 80, 81, 82) The District Court entered an Order, Judgment and Order Denying a Certificate of Appealability. (Dkt. Nos. 85-86, 88)

Petitioner does not contend otherwise. Rather, he argues that the District Court rejected his argument that there was insufficient evidence of the force element to support his conviction. A judgment is not void under Rule 60(b)(4) simply because Petitioner believes it is erroneous. *FTC v. Hewitt*, 68 F.4th 461, 465 (9th Cir. 2023) (citing *United Student Aid*, 559 U.S. at 270). Petitioner had notice of the judgment and filed an appeal. The Ninth Circuit denied a certificate of appealability. (Dkt. Nos. 95-96) Therefore, he had a full and fair opportunity to litigate. *United Student Aid*, 559 U.S. at 275-76. This Court previously rejected Petitioner's argument not only in the original judgment but also in Petitioner's numerous post-judgment motions. The court will not repeat its decisions here. Petitioner has already filed a notice of appeal from the most recent Order dated December 20, 2022 (Dkt. No. 142).

IT IS ORDERED that Petitioner's motion for relief from void judgment under Fed. R. Civ. P. 60(b)(4) is DENIED. A certificate of appealability is DENIED.

Initials of Preparer SR

APPENDIX E
MOTION FOR RELIEF FROM VOID JUDGMENT
— A VIOLATION OF DUE PROCESS
PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 60(B)(4)
(NOVEMBER 21, 2023)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAMON BALAR COOK,

Petitioner,

v.

GEORGE M. GALAZA, WARDEN,

Respondent.

Case No. 2:00cv00-08569-RJK-MC

MOTION TO SET ASIDE VOID JUDGMENT
FED. R. CIV. P. 60(B)(4)
See Simer v. Rios (7th Cir. 1981)
661 F.2d 655, 663, Fn.18

Hearing Date: To be Calendared by the Court Clerk
without delay

Hearing Time: To be Calendared by the Court Clerk
without delay

Court Room: To be Calendared by the Court Clerk
without delay

RELIEF SOUGHT

Petitioner Damon B. Cook, moves this court, pursuant to rule 60(b)(4) for an order setting aside the 2254 judgment entered in this action on August 21, 2002.

GROUND FOR RELIEF

The 2254 judgment is void for the purpose of Rule 60(b)(4) because it was entered in a manner inconsistent with the due process (insufficient evidence of the force element). *See Fiore v. White* (2001) 531 U.S. 225, 226-229.

See V.T.A. Inc 597 F.2d at 224-225

See Arthur Anderson & Co. v. Ohio (In Re Four Seasons Sec. Laws Litig. 502 F.2d 834, 842 (10th Cir) cert. denied, 419 U.S. 1034, 42 L.ed.2d 309, 95 S.Ct. 516 (1974).

Unlike its counterparts, Rule 60(b)(4), which provides relief from void judgments, is not subject to any time limitations.

See V.T.A. Inc v. Airco, Inc, 597 F.2d 220, 224 fn.9 (10th Cir. 1979). If a judgment is void it is a nullity from the outset and any Rule 60(b)(4). Motion for Relief is there for filed within a reasonable time.

See Venable v. Haislip, 721 F.2d 297, 299-300 (10th Cir. 1983). Furthermore when Rule 60(b)(4) is applicable, relief is not a discretionary matter, "it is mandatory."

See V.T.A. Inc, 597 F.2d at 224 N.8.

See also, Venable, 721 F.2d at 300

See Spitznas v. Boone (10th Cir. 2006) 464 F.3d 1213, 1225.

Rule 60(b)(4) may be brought at any time.

See Orner v. Shahala (10th Cir. 1994) 30 F.3d 1307, 1310.

See Meadows v. Dominican Republic (9th Cir. 1987) 817 F2d 517, 521.

There is no time limit on a Rule 60(b)(4) Motion to set aside a judgment as VOID.

Here, the 2254 judgment is VOID because it was entered in violation of the due process clause of the 5th and 14th Amendments of the United States Constitution. (Insufficient evidence of the force element).

See Fiore v. White (2001) 531 U.S. 225, 226-229

See Simer v. Rios (7th Cir. 1981) 661 F2d 55, 663 fn.18

But where an error of constitutional dimension occurs, a judgment maybe vacated as VOID.

One such constitutional error for concluding that a judgment is VOID for purposes of Rule 60(b)(4) is if the judgment was entered in violation of due process (see fn.18)

See Winhoven v. United States (9th Cir. 1952) 201 F2d 174, 174-175.

We hold the District Court erred in failing to consider Winhoven's contention that 2255 judgement is void, if void for violation of the due process clause . . . he may move to set it aside without appealing there from.

If judgment is void, court must grant relief. *See Thos P. Gonzalez Corp. v. Consejo Nacional De Costa Rica* (9th Cir. 1980) 614 F.2d 1247, 1256

PRAYER FOR RELIEF

For all the forgoing stated reasons and points of authorities supporting the Petitioner Damon B. Cook's Rule 60(b)(4) motion to set aside the 2254 judgment as void for violation of due process.

I, Damon B. Cook was prejudicially denied the opportunity to be heard on the true merits of the insufficient evidence of force claim.

/s/ Damon B. Cook

Dated: Nov. 21, 2023

See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 271.

PRELIMINARY HEARING TRANSCRIPT
JULY 25, 1997

Q. Did you look or examine Miss Healey to see if there were any bruises, contusions, or scratches?

A. No, sir.

Q. Did she complain of any injuries of any type?

A. She did not complain of any pain.

MR. RENNER: May I have a moment, Your Honor?

THE COURT: Yes.

Q. (BY Mr. Renner) Did Miss Healey complain of any injuries she may have sustained?

A. No, she did not.

Q. On your examination of Miss Healey or speaking with Miss Healey did you observe or see any marks of any physical force being used against Miss Healey at any time?

A. No, sir.

MR. RENNER: I have no further questions of this witness.

THE COURT: Do you have anything further?

MR. HOFELD: No re-redirect, Your Honor.

THE COURT: May this witness be excused?

MR. HOFELD: Yes, Your Honor.

THE COURT: Mr. Holmes, you may step down. You're free to remain or you may leave if you wish.

Call your next witness.

MR. HOFELD: Rest.

THE COURT: Counsel.

MR. RENNER: Your Honor, Mr. Cook is asking that I make an objection to this officer's testimony based on *corpus delecti* rule and evidence was not fully submitted for the proof.

See Jones v. Superior Court (1971) 40.3d 660

**APPENDIX F
PETITIONER'S FIRST DECLARATION
SUBMITTED IN SUPPORT OF THE RULE
60(B)(4) MOTION
(DECEMBER 28, 2023)**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAMON B. COOK,

Petitioner,

v.

GEORGE M. GALAZA, WARDEN,

Respondent.

Case No. 2:00cv00-08569-RJK-MC

Petitioner's first declaration submitted in support of the rule 60(b)(4) motion dated December 28, 2023 Prior to the district court's order denying the rule 60(b)(4) motion on January 17, 2024 with a letter notice from R. Smith Deputy Clerk to transfer the information to the court's pleading paper provided.

Note: The District Court should have waited until it received the declaration from the Petitioner on the court's pleading paper before ruling/denying the Rule 60(b)(4) Motion.

* * *

App.19a

See Rule 60(b)(4) Motion

See United Student Aid Funds, Inc. v. Espinosa
(2010) 559 U.S. 260, 271

I, Damon B. Cook, declare that I am the Petitioner in this case and I, Damon B. Cook, declare that I was prejudicially denied an opportunity to be heard on his insufficiency of the evidence of force claim on its true merits in accord with due process of law during the proceedings culminating in the underlying judgment.

That is, the Federal District Court failed and refused to address the true merits of the Petitioner Damon Cook's Insufficiency of the Evidence of Force Claim when there was No-No-No-No substantial evidence of the force element presented to the jury on this force element. And the United States Supreme court had been published *Fiore v. White* (2001) 531 U.S. 225, 226-229. Before the underlying judgment in this case on August 21, 2002.

See the United States District Court for the Northern District of California gave petitioner *Allen* his due process rights to be heard and granted his petition for a writ of habeas corpus. *See Allen v. Woodford* 2003 U.S. Dist. Lexis 19474 at pp.23-25.

See Gonzalez v. Crosby 545 U.S. at 534 Re: Rule 60(b)(4).

See Hansen v. Caldwell's Diving (2005) 2005 U.S. Dist. Lexis 28095

See Constr. Drilling Inc v. Chusid (3d Cir. 2005) 131 Fed.Appx. 366, 2005 WL1111760 at 3

A judgment may also be void if a court acted inconsistent with due process of law pursuant to Rule 60(b)(4). *Id.* at pp.372-373

App.21a

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Damon B. Cook

Dated: December 28, 2023

The Judgment is VOID in this case. Rule 60(b)(4)

APPENDIX G
PETITIONER'S SECOND DECLARATION
SUBMITTED IN SUPPORT OF THE RULE
60(B)(4) MOTION AFTER THE LETTER
NOTICE FROM R. SMITH DEPUTY CLERK
(JANUARY 21, 2024)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAMON BALAR COOK,

Petitioner,

v.

GEORGE M. GALAZA, WARDEN,

Respondent.

Case No. 2:00cv00-08569-RJK-MC

See United Student Aid Funds, Inc. v. Espinosa
(2010) 559 U.S. 260, 271

I, Damon B. Cook, declare that I am the Petitioner in this case and I, Damon B. Cook, declare that I was prejudicially denied an opportunity to be heard on his insufficiency of the evidence of force claim on its true merits in accord with due process of law during the proceedings culminating in the underlying judgment, that is, the Federal District Court failed and refused to address the true merits of the Petitioner Damon B. Cook's insufficiency of the evidence of force claim

when there was no-no-no-no substantial evidence of the force element presented to the jury on this force element. And the United States Supreme court had been published *Fiore v. White* (2001) 531 U.S. 225, 226-229. Before the underlying judgment in this case on August 21, 2002.

See Allen v. Woodford 2003 U.S. Dist. Lexis 19474 at pp.23-25. The U.S. District Court gave the petitioner *Allen* his due process rights to be heard and granted his petition for a writ of habeas corpus. *See Allen, Id.* at pages 23-25 (Walker). *See Juan H. v. Allen* (9th Cir. 2005) 408 F.3d 1262, 1279. *See Rayner v. Superintendent* (3d Cir. 2023) 2023 U.S. App. Lexis 2526 (McKee). *See Gonzalez v. Crosby* 545 U.S. at 534 Re: Rule 60(b)(4). Any factor rendering the judgment void. *See People v. Jackson* (1992) 6 Cal.App.4th 1347. *See Hansen v. Caldwell's Diving* (2005) 2005 U.S. Dist. Lexis 28095. *See Constr. Drilling Inc v. Chusid* (3d Cir. 2005) 131 Fed. Appx. 366, 372-373.

See People v. Brown (2017) 11 Cal.App.5th 332, 342.

The judgment is VOID in this case under Rule 60(b)(4) and Petitioner Damon B. Cook prays that the court grant the writ and order his immediately release.

See Voigt v. Webb, 47 F.Supp. 743, 750.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Damon B. Cook