

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

CASE #: 24-10603-H

MORGAN ALLEN ARMSTRONG,

vs.
Sec. Dept. Corr. et al.,

FOR MAILING

MAY 03 2024

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APPENDIX

COMES NOW, the applicant filing the following exhibits with petitioner's COA application:

A- LAS VEGAS, NV temporary custody sheet, Complaint Affidavits 887, 888 cases, charging information(s) 887, 888 cases, Verdict form 886 case - "NOT Guilty";

B- Hearing transcripts - 8-8-11, p's 1-3, 27-28, 31, 35-36, 38, 41-44, 58-59, 71-73, 253, and 5 page document / affidavit;

C- Williams Rule Evidence transcripts - 9-2-11, p's 1-3, 26, 54, 94-95, Court orders case 888 - 9-7-11, case 887 - 9-9-11;

D- Sentencing transcript - 9-20-11, p's 1-10;

E- Judgments and Sentences - 9-20-11;

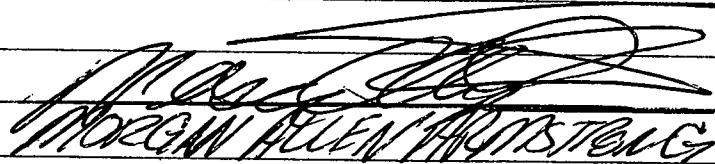
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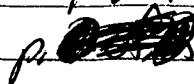
respectfully
~~Morgan Allen Armstrong~~
PROSE' Morgan Allen Armstrong 044209246
Liberty CI, 11064 Hwy 1 Demarest, Baron Rd
Bristol, FL 32321

Certificate of Service

I hereby certify that a true copy of this
document and exhibits were sent to:
Clerk of Court 56 Forsyth St. NW, ATL, GA
30303, and Attorney General's office
3507 E. Frontage Rd. Ste. 200 Tampa, FL
33607.

ON - 24.


Morgan Allen Armstrong

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-10603-H

MORGAN ALLEN ARMSTRONG,

Petitioner - Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ORDER: Pursuant to the 11th Cir. R. 42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Morgan Allen Armstrong has failed to pay the filing and docketing fees to the district court within the time fixed by the rules.

Effective August 06, 2024.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

FOR THE COURT - BY DIRECTION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10603

MORGAN ALLEN ARMSTRONG,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:14-cv-00075-MSS-TGW

ORDER:

Morgan Armstrong is a Florida prisoner serving a 35-year sentence after being convicted of robbery with a deadly weapon, in 2 separate cases. In 2013, Mr. Armstrong filed a *pro se* 28 U.S.C. § 2254 petition, arguing, in relevant part, that: (1) law enforcement officers relied on an affidavit containing false statements in order to arrest Mr. Armstrong; and (2) the sentencing judge was biased against him and erred by considering an acquittal in a previous case. On March 14, 2017, the district court found that both claims were procedurally defaulted and denied Mr. Armstrong's § 2254 petition.

In January 2024, Mr. Armstrong filed a *pro se* Fed. R. Civ. P. 60(b)(6) motion as to the denial of his § 2254 petition. He reiterated that his convictions violated his constitutional rights because law enforcement officials had relied on false affidavits in arresting him. Mr. Armstrong further repeated his claim that the sentencing judge was biased against him, such that the judge lacked jurisdiction over the prosecutions. He concluded by asserting that his case presented "a miscarriage of justice and extraordinary circumstances." The district court dismissed the motion as an unauthorized second or successive petition, finding that Mr. Armstrong improperly sought to relitigate the merits of his claims without authorization from this Court.

Mr. Armstrong appealed, and now moves this Court for leave to proceed *in forma pauperis* ("IFP"). Because Mr. Armstrong seeks leave to proceed IFP, his appeal is subject to a frivolity determination. See 28 U.S.C. § 1915(e)(2)(B). An action "is frivolous if it

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Order of the Court

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is without arguable merit either in law or fact.” *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001). IFP status should be granted where (1) the appellant is indigent, and (2) the appeal is not frivolous. *See 28 U.S.C. § 1915(e)(2)(B)*.

Here, Mr. Armstrong has no non-frivolous arguments on appeal, as the district court properly concluded that his Rule 60(b) motion was an impermissibly successive § 2254 petition. Mr. Armstrong’s motion attempted to relitigate the merits of his underlying claims, without challenging the district court’s earlier determination that the claims were procedurally defaulted. *See Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005) (stating that a Rule 60(b) motion is an impermissible successive habeas petition if it attacks the habeas court’s previous resolution of a claim on the merits). Additionally, he did not obtain authorization from this Court in order to file a successive § 2254 petition attacking his underlying convictions. *See 28 U.S.C. § 2244(b)(3)(A)*.

Accordingly, Mr. Armstrong’s motion for IFP is DENIED.



UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MORGAN ALLEN ARMSTRONG,

Petitioner,

v.

Case No. 8:14-cv-75-MSS-TGW

**SECRETARY, DEPARTMENT
OF CORRECTIONS,**

Respondent.

ORDER

An earlier order denied Armstrong's petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his two state court convictions for robbery with a deadly weapon and denied a certificate of appealability. (Doc. 141) Armstrong appealed and subsequently dismissed his appeal. (Docs. 143, 147, and 148) The court of appeals dismissed Armstrong's application for leave to file a second or successive petition. (Doc. 155) Armstrong files a motion under Rule 60(b)(6), Federal Rules of Civil Procedure, for relief from the final order denying his petition. (Doc. 158)¹

In the amended motion, Armstrong raises the following claims: (1) his convictions violate his federal constitutional rights because law enforcement relied on an affidavit that contained false statements to arrest him, and (2) his convictions violate his federal constitutional rights because the trial judge departed from his role as a neutral arbiter and lacked jurisdiction over the prosecutions. (Doc. 158 at 3–10)

¹ After filing an initial motion (Doc. 157), Armstrong filed an amended motion. (Doc. 158) Consequently, the initial motion (Doc. 157) is **DENIED** as moot.

“[A] Rule 60(b) motion is to be treated as a successive habeas petition if it: (1) ‘seeks to add a new ground of relief;’ or (2) ‘attacks the federal court’s previous resolution of a claim *on the merits.*’” *Williams v. Chatman*, 510 F.3d 1290, 1293–94 (11th Cir. 2007) (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005)) (italics in original). “Where, however, a Rule 60(b) motion ‘attacks, not the substance of the federal court’s resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings,’ the motion is not a successive habeas petition.” *Williams*, 510 F.3d at 1294 (quoting *Gonzalez*, 545 U.S. at 532).

Armstrong raised the false arrest claim as ground three of his federal petition and raised the bias claim as ground four. (Docs. 8 at 9, 11 and 9 at 34–57) The earlier order dismissed both claims as procedurally defaulted because Armstrong failed to raise the claims in his brief on direct appeal and failed to demonstrate either cause and prejudice or a miscarriage of justice to excuse the procedural default. (Doc. 141 at 17–19, 27) Because Armstrong does not challenge the dismissal of the claims as procedurally defaulted and instead reargues the merits of the claims (Doc. 158 at 3–10), the Court construes the Rule 60(b) motion as an unauthorized second or successive petition. 28 U.S.C. § 2244(b)(1) (“A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.”). Armstrong must obtain permission from the court of appeals before he may seek any relief in district court. 28 U.S.C. § 2244(b)(3)(A).

Even if the Court could construe Armstrong’s *pro se* motion as challenging the dismissal of the claims as procedurally defaulted, the motion is untimely. Armstrong moves for relief under Rule 60(b)(6) (Doc. 158 at 1), which authorizes relief for “any other reason that justifies relief.” If construed as a challenge to the dismissal of the claims as procedurally defaulted, the motion asserts a mistake of both law and fact. Because Rule 60(b)(6) “applies

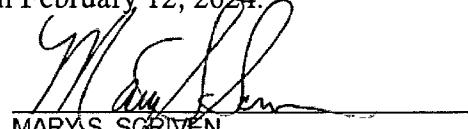
only to cases that do not fall into any of the other categories listed in parts (1)–(5) of Rule 60(b)," and Rule 60(b)(1) authorizes relief for a mistake of law and fact, Rule 60(b)(6) does not apply. *BUC Int'l Corp. v. Int'l Yacht Council Ltd.*, 517 F.3d 1271, 1275 n.4 (11th Cir. 2008).

A party must file a motion under Rule 60(b)(1) "no more than a year after the entry of judgment." Fed. R. Civ. P. 60(c)(1). Judgment against Armstrong entered on March 14, 2017 (Doc. 142), and Armstrong placed in the hands of prison officials for mailing his Rule 60(b) motion on January 12, 2024. (Doc. 157 at 1) Consequently, the motion is untimely.

Lastly, Armstrong asserts that he demonstrated a fundamental miscarriage of justice by showing that he was entitled to relief on his claims. (Doc. 158 at 11) A fundamental miscarriage of justice may excuse a procedural default. *House v. Bell*, 547 U.S. 518, 536–37 (2006). However, to demonstrate a fundamental miscarriage of justice, Armstrong must present new reliable evidence not presented at trial that demonstrates actual innocence. *Schlup v. Delo*, 513 U.S. 298, 324 (1995). In his supplemental reply (Doc. 132 at 7), Armstrong argued that his actual innocence excused the procedural default, but he failed to submit new evidence that demonstrated his actual innocence. Because the earlier order correctly determined that Armstrong failed to meet his burden under *Schlup*, his Rule 60(b) motion is meritless.

Accordingly, Armstrong's amended motion (Doc. 158) is construed as an unauthorized second or successive petition and **DISMISSED** for lack of jurisdiction. In the alternative, the Court **DENIES** the amended motion as untimely and meritless. To the extent that the Court has jurisdiction over the motion, a certificate of appealability and leave to appeal *in forma pauperis* are **DENIED**.

DONE AND ORDERED in Tampa, Florida on February 12, 2024.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

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