

Appendix

Fourth Circuit Opinions Filed on January 28, 2025 and March 24, 2025 attached, from appeal from the United States District Court for the Eastern District of Virginia at Newport News and United States Court of appeals for the Fourth Circuit. (See Attachment(s)).

UNPUBLISHED

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

No. 23-6844

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANDRA G. GREEN, a/k/a Giz, a/k/a Gizzle, a/k/a A. Gizzle, a/k/a Andra Gabrael
Green, a/k/a Andra Gabriel Green, Jr., a/k/a A.J.,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at
Newport News. Rebecca Beach Smith, Senior District Judge. (4:09-cr-00081-RBS-FBS-
7; 4:23-cv-00084-RBS)

Submitted: January 23, 2025

Decided: January 28, 2025

Before GREGORY, WYNN, and THACKER, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Andra G. Green, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Andra G. Green seeks to appeal the district court's order dismissing his 28 U.S.C. § 2255 motion as successive and unauthorized. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When, as here, the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the motion states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Green has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

FILED: January 28, 2025

UNITED STATES COURT OF APPEALS
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(4:09-cr-00081-RBS-FBS-7)
(4:23-cv-00084-RBS)

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J U D G M E N T

In accordance with the decision of this court, a certificate of appealability is
denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in
accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

ANDRA G. GREEN,

Petitioner,

v.

CIVIL ACTION NO. 4:23cv84
[ORIGINAL CRIMINAL NO. 4:09cr81-7]

UNITED STATES OF AMERICA,

Respondent.

DISMISSAL ORDER

This matter comes before the court on Petitioner's second Motion to Vacate under 28 U.S.C. § 2255 ("Second Habeas Petition"), ECF No. 759, and its associated Motion for a Writ of Habeas Corpus Ad Subjiciendum ("Motion for Writ"), ECF No. 760. For the reasons stated below, both motions are **DISMISSED**.

I.

Petitioner pleaded guilty on October 3, 2011, to Counts Twenty-Nine and Thirty-Four of the Third Superseding Indictment. See ECF Nos. 284 (Third Superseding Indictment), 430 (Plea Agreement), 433 (Order Accepting Plea). Counts Twenty-Nine and Thirty-Four charged Petitioner with Murder With a Firearm in Relation to a Crime of Violence, in violation of 18 U.S.C.

§§ 924(j), 2.¹ See ECF No. 515 (Judgment). On January 25, 2012, the court sentenced Petitioner to Life on both counts, to be served concurrently. Id. at 3.

On April 11, 2016, Petitioner filed a Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("First Habeas Petition"). See ECF No. 644. The court ultimately dismissed Petitioner's First Habeas Petition as untimely on June 7, 2016. See ECF No. 653 ("Dismissal Order"). After the court granted Petitioner an extension to appeal the dismissal, ECF No. 658, Petitioner appealed to the Fourth Circuit on August 29, 2016. ECF No. 660. The Fourth Circuit then held Petitioner's appeal in abeyance, pending the outcome of several cases before the Supreme Court which stood to impact the validity of Petitioner's § 924(j) convictions. ECF No. 665. The Fourth Circuit granted a certificate of appealability on two issues related to the court's dismissal of Petitioner's § 2255 motion:

(1) "whether a § 2255 motion filed within a year of Johnson v. United States, but effectively premised on United States v. Davis is timely"; and (2) "if so, whether, following Davis, Green's . . . convictions are infirm."

¹ Critical to the reasoning and holding of the Fourth Circuit's instant remand, Count Twenty-Nine of the Third Superseding Indictment identified two predicate crimes of violence; attempted Hobbs Act Robbery and conspiracy to commit Hobbs Act Robbery. See ECF No. 284 at 24-29.

(b) a corrected sentence."). In that fashion, Petitioner's Life sentence on Count Thirty-Four would remain untouched and valid.

However, shortly after the Fourth Circuit's mandate yet before the undersigned issued an order in response, Defendant, through counsel, filed a petition for a writ of certiorari, in order to appeal the Fourth Circuit's decision. See Green, No. 16-7168, 67 F.4th 657, petition for cert. filed, ____ U.S.L.W. ____ (U.S. July 25, 2023) (No. 23-5194); ECF No. 763. In his petition, Defendant contends that Count Thirty-Four is also no longer supported by a valid predicate offense because (1) "Hobbs Act robbery does not qualify as a crime of violence under 18 U.S.C. § 924(c)," and (2) "the elements clause in Section 924(c) is unconstitutionally vague." Id. at 11. Because Defendant's First Habeas Petition is now before the Supreme Court, the undersigned's response to the Fourth Circuit's mandate is held in abeyance until the resolution of the Supreme Court's proceedings.

III.

On July 10, 2023, the same date of the Fourth Circuit's mandate, Petitioner also filed, pro se, the instant Second Habeas Petition, ECF No. 759, and Motion for Writ, ECF No. 760, in reference to the Second Habeas Petition. Because the Second Habeas Petition was filed without the Fourth Circuit's authorization, it is a successive petition and must be **DISMISSED**. See 28 U.S.C. § 2255(h). Additionally, it is unclear to the court whether

Petitioner intended to file his motion for a writ of habeas corpus ad subjiciendum, ECF No. 760, as styled, or for a writ of habeas corpus ad testificandum. The writ of habeas corpus ad subjiciendum, also known as the "Great Writ," was codified by 28 U.S.C. §§ 2241-2255 (habeas corpus statutes). As such, the writ of habeas corpus ad subjiciendum "is not cognizable." Madad v. Puentes, 1:19-cv-00488, 2019 WL 1934474, *2 (E.D. Cal. May 1, 2019); see Amede v. Ortiz, Civ. No. 20-7206, 2020 WL 4671116, *2 (D.N.J. Aug. 12, 2020).

However, in the motion, Petitioner indicates that the requested writ commands the court to "produce the body of the prisoner/defendant detained." ECF No. 760 at 1. That description is consistent with the writ of habeas corpus ad testificandum. See e.g., Edwards v. Vannoy, 141 S. Ct. 1547, 1566 (2021) (Gorsuch, J., concurring). Even if Petitioner's motion is properly construed as a motion for a writ of habeas corpus ad testificandum, the motion was premature and moot, as the associated Second Habeas Petition is herein dismissed, and thus no hearing on the matter is required. See Kirk v. United States, 589 F. Supp. 808, 809 (E.D. Va. 1984) (Warriner, J.) (noting that the writ of habeas corpus ad testificandum is a discretionary matter for the district court). Under either construction, Petitioner's Motion for Writ is **DISMISSED**.

FILED: March 24, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6844
(4:09-cr-00081-RBS-FBS-7)
(4:23-cv-00084-RBS)

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Defendant - Appellant

M A N D A T E

The judgment of this court, entered January 28, 2025, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

/s/Nwamaka Anowi, Clerk



City of Newport News

Main Office • 2400 Washington Avenue, 9th Floor • Newport News, Virginia 23607
DHS Annex • 6060 Jefferson Avenue, 3rd Floor • Newport News, Virginia 23605

Office of the City Attorney

Phone (757) 926-8416 • Fax (757) 926-8549
Phone (757) 926-6466

Chief Deputy City Attorney
Litigation
DARLENE P. BRADBERRY

Senior Assistant City Attorneys
PAMELA P. BATES
PHILIP L. BRADFELD
SHANNON M. MANNING

Assistant City Attorneys
SHANNON M. JONES
MACON M. WHITSON

City Attorney
COLLINS L. OWENS, JR.

July 19, 2023

Chief Deputy City Attorney
Administrative Law
ROBERT E. PEALO

Senior Deputy City Attorney
LYNN A. SPRATLEY

Deputy City Attorney
ADONICA BAINE

Assistant City Attorney - DHS Annex
PATRICK C. MURPHREY

Mr./Ms. Andra' Green
Register # 75507-083
United States Penitentiary
P.O. Box 1000
Lewisburg, PA 17837

Subject: Virginia Freedom of Information Act Request

Dear Mr/Ms. Green,

The Newport News City Attorney's Office is in receipt of your Virginia Freedom of Information Act (FOIA) request wherein you asked certain questions regarding the current ownership of "the Brookridge Apartment Complex" and whether or not the land on which it sits was ceded to the Federal Government "in the year of 2008 to present". You also requested to receive a city map "showing the areas not ceded or cession by the State, from Mercury Blvd. to Ivy Avenue in the City of Newport News".

For your information, § 2.2-3703(C) of FOIA states that, "No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to afford any rights to any person (i) incarcerated in a state, local or federal correctional facility, whether or not such facility is (a) located in the Commonwealth . . .". Our office is, therefor, not required under FOIA to provide the information you have requested. Nevertheless, I can tell you that the City's land records show that the apartment complex about which you have inquired (which is located at 614 Peninsula Drive in Newport News) was at all times privately owned, by various owners, dating back to 1986 to the present, and has never been owned by the City, the State or the Federal Government.

Very truly yours,

Lynn A. Spratley
Sr. Deputy City Attorney

(c)

Cl 17. Authority over places purchased or ceded.

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

Construction Battalion Center are located were "purchased by the Consent of the Legislature" of Mississippi, within meaning of Art. I, § 8, cl 17, where Federal Government acquired relevant lands by condemnation between 1941 and 1950, state had expressly given its consent, in accordance with Art. I, § 8, cl 17, to United States' acquisition of any land in state for public buildings, subject only to state's right to serve civil and criminal process on such public lands, and United States' assent to exercise of exclusive jurisdiction over lands occupied by the two bases was given through series of letters from government officials to governors of Mississippi between 1942 and 1950. United States v. State Tax Com., 412 U.S. 363, 93 S. Ct. 2183, 37 L. Ed. 2d 1 (1973).

State may condemn lands for purpose of transferring them to United States for establishment of national park, and in doing so does not violate any constitutional rights. State v. Oliver, 162 Tenn. 100, 35 S.W.2d 396 (Tenn. 1930).

19. "Needful buildings"

* Words "needful Buildings" mean buildings on lands ceded by state to United States and over which federal government acquires exclusive jurisdiction. Tagge v. Gulzow, 132 Neb. 276, 271 N.W. 803 (Neb. 1937).

NOTE IN
BOOKS IDEAS
APPLYMENT
COMPLEX

* Term "other needful Buildings" embraces whatever structures are necessary in performance of particular functions of federal government for which purpose property was acquired, and includes post offices, court buildings, and customhouses. State v. DeBerry, 224 N.C. 834, 32 S.E.2d 617 (1945).

22. Use of purchased place

* United States has constitutional right to exercise jurisdiction over territory, within geographical limits of state, acquired for purposes other than those specified in Art. I, § 8, cl. 17. Collins v. Yosemite Park & Curry Co., 304 U.S. 518, 58 S. Ct. 1009, 82 L. Ed. 1502 (1938).

Art I, § 8, cl 17 of Constitution has been broadly construed, and United States' acquisition from state, by consent or cession, of exclusive or partial jurisdiction over properties for any legitimate governmental purpose beyond those itemized is permissible. *Kleppe v. New Mexico*, 426 U.S. 529, 96 S. Ct. 2285, 49 L. Ed. 2d 34, 6 Env'tl. L. Rep. 20545, reh'g denied, 429 U.S. 873, 97 S. Ct. 189, 50 L. Ed. 2d 154 (1976).

Unconditional grant of island to United States does not imply use for military purposes only, especially where United States leased island for fishing purposes; such leasing constituted acceptance. *Columbia River Packers' Ass'n v. United States*, 29 F.2d 91 (9th Cir. 1928).

Cl 2. Territory or property of United States.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Power Co. v. Cascade Town Co., 205 F. 123 (8th Cir. 1913).

* Congress' constitutional power over proper administration and disposition of public lands is without limitation; once Congress has acted in that regard, both courts and executive agencies have no choice but to follow strictly dictates of such statutes. *Kidd v. United States Dep't of Interior, Bureau of Land Management*, 756 F.2d 1410 (9th Cir. 1985).

* Under Property Clause, U.S. Const. art. IV, § 3, cl. 2, Congress exercises powers both of proprietor and of legislature over public domain, and Congress' power over federal lands is without limitations. *Nuclear Energy Inst., Inc. v. EPA*, 373 F.3d 1251, 362 U.S. App. D.C. 204, 58 Env't Rep. Cas. (BNA) 1865 (D.C. Cir. 2004), reh'g denied, 2004 U.S. App. LEXIS 18780 (D.C. Cir. Sept. 1, 2004), reh'g en banc, denied, 2004 U.S. App. LEXIS 18782 (D.C. Cir. Sept. 1, 2004).

* 18 USCS § 844(f) is permissible exercise of Congress's power under Property Clause, U.S. Const. art. IV, § 3, cl. 2. *United States v. Hersom*, 588 F.3d 60 (1st Cir. 2009).

Defendant was properly convicted of violating 36 CFR § 4.2(b) by failing to wear helmet while riding motorcycle on federal road located within national recreational area; Section 4.2, which adopts state traffic regulations, does not exceed federal government's authority under Property Clause; Property Clause power does not depend on existence of concurrent or exclusive federal jurisdiction, and § 4.2 qualifies as needful rule for use of federal land and protection of public. *United States v. Bohn*, 622 F.3d 1129 (9th Cir. 2010).

Congress had power to enact 18 USCS § 2241(c) under Property Clause and this constitutional authority gave Congress power to enact laws to ensure safety of surrounding communities by regulating and monitoring post-release behavior; Sex Offender Registration and Notification Act's (SORNA), Pub. L. 109-248, Tit. I, 120 Stat. 590 (2006), registration requirement, 42 USCS § 16913, and criminal penalties for violation of registration requirements, 18 USCS § 2250, are rationally related to public safety, which is advanced by alerting public to risk of sex offenders in their community; accordingly, SORNA was rationally related to enumerated power. *United States v. Elk Shoulder*, 696 F.3d 922 (9th Cir. 2012), op. withdrawn, sub. op., 738 F.3d 948 (9th Cir. 2013).

✓ 5.—Property within state

✱ While Congress may legislate in respect to all arid lands within limits of territories, it has no legislative control over states, and must, so far as they are concerned, be limited to authority over property belonging to United States within their limits. *Kansas v. Colorado*, 206 U.S. 46, 27 S. Ct. 655, 51 L. Ed. 956 (1907).

Power of Congress over lands of United States wherever situated is exclusive; when that power has been exercised with reference to land within borders of state, neither state nor any of its agencies has power to interfere. *Griffin v. United States*, 168 F.2d 457 (8th Cir. 1948).

6.Acquisition of property and manner thereof

Power to acquire territory either by conquest or treaty is vested in United States. *United States v. Huckabee*, 83 U.S. 414, 21 L. Ed. 457 (1873).

Dominion of new territory may be acquired by discovery and occupation as well as by cession or conquest. *Jones v. United States*, 137 U.S. 202, 11 S. Ct. 80, 34 L. Ed. 691 (1890).

✱ When territory is once acquired by treaty, it belongs to United States and is subject to disposition of Congress. *De Lima v. Bidwell*, 182 U.S. 1, 21 S. Ct. 743, 45 L. Ed. 1041 (1901).

✱ United States is in nature of corporate entity, has common law right to acquire property, and may take transfer of property rights from another government. *Russia v. National City Bank*, 69 F.2d 44 (2d Cir. 1934).

Congress has power to determine acceptance of gifts to United States. *Story v. Snyder*, 184 F.2d 454, 87 U.S. App. D.C. 96 (D.C. Cir.), cert. denied, 340 U.S. 866, 71 S. Ct. 88, 95 L. Ed. 632 (1950).

7.Reservation of property or rights

Federal Power Commission had exclusive jurisdiction to grant license to construct power project on reserved lands of United States, and on nonnavigable river, in state of Oregon. *Federal Power Comm'n v. Oregon*, 349 U.S. 435, 75 S. Ct. 832, 99 L. Ed. 1215, 8 Pub. Util. Rep. 3d (PUR) 402 (1955).

Reservation of water rights by federal government is empowered by property clause of Constitution (Art IV, § 3, cl 2), which permits federal regulation of federal lands. *Cappaert v. United States*, 426 U.S. 128, 96 S. Ct. 2062, 48 L. Ed. 2d 523, 6 Env'tl. L. Rep. 20540 (1976).

✱ Even if Congress could defeat state's title to land under navigable waters by reserving said land for purposes of a reservoir prior to state's admission into Union, federal government failed to act in manner sufficient to defeat Utah's title to lakebed since there is insufficient indication of congressional intent to include state lakebed within federal reservation of certain reservoir sites, or of any to ratify reservation of lakebed in subsequent appropriations provisions, and there was no clear intention to defeat state claim to lakebed title under equal footing doctrine when Utah entered into statehood. *Utah Div. of State Lands v. United States*, 482 U.S. 193, 107 S. Ct. 2318, 96 L. Ed. 2d 162 (1987).

United States possesses reserved rights for its federal reservations in Colorado in waters unappropriated upon date of reservation of federal lands from public domain, and in amount necessary to achieve primary purposes of reservations. *United States v. Denver*, 656 P.2d 1 (Colo. 1982).