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**ORDER, U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
(APRIL 17 2025)**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DAMON BALAR COOK,

Petitioner-Appellant,

v.

GEORGE M. GALAZA, WARDEN,

Respondent-Appellee.

No. 25-2290

D.C. No. 2:00-cv-08569-JFW-AGR

Central District of California, Los Angeles

ORDER

The notice of appeal filed on March 27, 2025 seeks review of the same judgment as closed appeal No. 24-630. This duplicate appeal No. 25-2290 is dismissed.

The clerk will docket a copy of the notice of appeal (District Court Docket Entry No. 155) in closed appeal No. 24-630.

This order serves as the mandate of the court.

FOR THE COURT:
MOLLY C. DWYER
CLERK OF COURT

App.2a

**ORDER, U.S. DISTRICT COURT
CENTRAL DISTRICT CALIFORNIA
(JANUARY 17, 2024)**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAMON BALAR COOK,

Petitioner,

v.

GEORGE M. GALAZA, WARDEN,

Respondent.

Case No. CV-00-08569

CIVIL MINUTES – GENERAL

**Proceedings: (In Chambers)
ORDER DENYING MOTION FOR RELIEF
FROM VOID JUDGMENT 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.

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**ORDER DENYING RECONSIDERATION,
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
(JULY 21, 2025)**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DAMON BALAR COOK,

Petitioner-Appellant,

v.

GEORGE M. GALAZA, WARDEN,

Respondent-Appellee.

No. 25-2290

D.C. No. 2:00-cv-08569-JFW-AGR

Central District of California, Los Angeles

Before: SILVERMAN, LEE, and VANDYKE, Circuit
Judges.

The motions (Docket Entry Nos. 8, 10, 13, 15,
18) to reconsider the April 17, 2025 order and recall
the mandate are denied.

No further filings will be entertained in this
closed case.

**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 Role 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, EXCERPT
(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

**EXCERPT FROM COOK
APPELLANT BRIEF REGARDING THE
INSUFFICIENCY OF EVIDENCE**

[...]

**IV. There Is Insufficient Evidence to Support
Appellant's Convictions for Rape and
Forcible Oral Copulation**

There was insufficient evidence to convict appellant of Forcible rape and oral copulation because there was no evidence of threats of "force" to the complaining witness, nor did she testify she feared "immediate and unlawful" bodily injury. Accordingly, appellant's convictions must be reversed.

A. Standard of Review

The proper standard of review for a sufficiency of the evidence challenge is whether, on the entire record, a reasonable tier of fact could have found the defendant guilty beyond a reasonable doubt. (*People v. Jones* (1990) 51 Cal.3d 294, 314; *People v. Johnson* (1980) 26 Cal.3d 557, 576-578; *Jackson v. Virginia* (1979) 443 U.S. 307, 318-319.) The appellate court must view the evidence in a light most favorable to the judgment and must presume in support of that judgment "the existence of a every fact a tier could reasonably deduce from the evidence." (*People v. Johnson, supra*, 26 Cal.3d at pp. 576-577.) Evidence of each of the essential elements of the offense must be "substantial". (*People v. Johnson, supra*, 26 Cal.3d at pp. 576-577.)

B. There Was Insufficient Evidence of Force or Fear of Bodily Injury to Support Appellant's Convictions.

Appellant was convicted of violations of section 261, subdivision (a)(2) and 288a which criminalizes sexual acts "accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person. . . ."

Rape may be committed by acts causing fear of immediate bodily harm to the complaining witness and does not require the threat of imminent harm. One court has defined fear as it is used in section 261, subdivision (a)(2), as; "A feeling of alarm or disquiet caused by the expectation of danger, pain, disaster or the like; terror; dread; apprehension." (*People v. Jeff* (1988) 204 Cal.App.3d 309, 325.) The complaining witness's fear may even be unreasonable to satisfy this element of the offense "if the accused knowingly takes advantage of that fear in order to accomplish sexual intercourse." (*Id.*, at p. 324, quoting *People v. Young* (1987) 190 Cal.App.3d 248, 259.)

In *Young* and *Jeff*, the courts concluded there was insufficient evidence to show the prosecutrix feared immediate and unlawful bodily injury, requiring reversal of the defendants' convictions. In both cases, the defendants. did not say or do anything that would induce in the complaining witness fear of immediate and unlawful bodily injury, such as threats or the use of physical force. (*People v. Young, supra*, 190 Cal.App.3d at p. 259; *People v. Jeff, supra*, 204 Cal.App.3d at p. 327.)

The California Supreme Court in *People v. Iniguez* (1994) 7 Cal.4th 847, 856 defined the element of “fear” of immediate and unlawful bodily injury” as having two components, one subjective and one objective. It must first be determined whether there is substantial evidence that the complaining witness “generally entertained a fear of immediate and unlawful bodily injury sufficient to induce her to submit to sexual intercourse against her will”; this is the subjective component. Although the “extent or seriousness of the injury feared is immaterial”, there must be some evidence that the complaining witness genuinely feared injury. (*Id.*, at pp. 856-857.) The objective component asks whether the victim’s fear was reasonable under the circumstances, or, if unreasonable, whether the perpetrator knew of the victim’s subjective fear and took advantage of it. (*Id.*, at p. 857.) Both of these elements must be satisfied in a prosecution for rape. (*Id.*, at pp. 856-857.)

Here, as in *Young* and *Jeff*, there was no testimony that the complaining witness was ever threatened by appellant, or that appellant used force in accomplishing the sexual acts. The complaining witness told appellant she did not want him to orally copulate her, but she did not testify that she feared appellant would harm her. During the sexual intercourse following the oral copulation, she testified she told appellant she did not want to do that, and tried to push appellant off her. (R.T. 63, 113) However, these statements merely show that the acts were accomplished against her will, not that they were accomplished against her will by means of fear of immediate and unlawful bodily injury. The complaining witness never testified she was afraid. (Compare with *People v.*

Iniguez, supra, 7 Cal.4th at p.857 [substantial evidence that complaining witness genuinely feared immediate and unlawful bodily injury where witness testified she “froze because she was afraid,” and that she “did not move because she feared defendant would do something violent.”].)

Because there was insufficient evidence to support the element of force or fear of immediate and unlawful bodily injury, appellant’s convictions on the forcible rape and oral copulation counts must be reversed; moreover, any further proceedings on the two counts are barred by the Double Jeopardy Clause, (*People v. Green* (1980) 27 Cal.3d 1, 62.)

See People v. Griffin (2004) 33 Cal.4th 1015, (Force Element) 16 Cal.Rptr.3d 891, 94 P.3d 1089; *See People v. Guido* (2005) (Force Element) 125 Cal. App.4th 566, 574-576; *See People v. Brown* (2017) 11 Cal.App.5th 332, 342;

[...]

**PRELIMINARY HEARING TRANSCRIPT
(JULY 25, 1997)**

Transcript, Page 65:

Q. Did You look or examine miss Healey to see if there were any bruises, confusions, 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 question 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 delicti Rule and Evidence was
not Fully Submitted for the Proof *See Jones v.*
Superior Court (1971) 4 Cal.3d 660.

[...]

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