

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

June 24, 2025

Christopher M. Wolpert  
Clerk of Court

DARVIN W. GRAY,

Petitioner - Appellant,

v.

CARRIE BRIDGES,

Respondent - Appellee.

No. 25-7023  
(D.C. No. 6:23-CV-00045-JFH-GLJ)  
(E.D. Okla.)

**ORDER DENYING CERTIFICATE OF APPEALABILITY\***

Before **EID, CARSON, and ROSSMAN**, Circuit Judges.

Darvin W. Gray is an Oklahoma prisoner proceeding pro se. Mr. Gray filed a motion in the district court that the court construed as an unauthorized second or successive petition for habeas relief under 28 U.S.C. § 2254. The district court therefore dismissed the motion for lack of jurisdiction. Mr. Gray requests a certificate of appealability (COA) to challenge this ruling (COA Motion).<sup>1</sup> We deny a COA and dismiss this proceeding.

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\* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

<sup>1</sup> Mr. Gray actually filed two COA motions, one postmarked April 4, 2025, which this court received on April 14 (ECF No. 3); and another postmarked April 29,

## I. BACKGROUND & PROCEDURAL HISTORY

In 2013, an Oklahoma jury convicted Mr. Gray of various charges relating to sexual assault of a minor. He unsuccessfully sought relief through direct appeal, state postconviction proceedings, and a § 2254 petition filed in the United States District Court for the Eastern District of Oklahoma.

In February 2023, Mr. Gray filed a Federal Rule of Civil Procedure 60(b) motion in the Eastern District of Oklahoma. Specifically, he invoked Rule 60(b)(4), which permits relief from judgment if “the judgment is void”; and Rule 60(b)(6), which permits relief from judgment based on “any other reason that justifies relief.” He asked the district court to “VOID [his] illegal sentence” because Congress had never disestablished the Muscogee (Creek) Reservation, meaning Oklahoma did not have jurisdiction to try and convict him. R. at 5. He did not cite *McGirt v. Oklahoma*, 591 U.S. 894 (2020), but his arguments otherwise tracked the arguments that prevailed in that case.<sup>2</sup> The district court denied the motion, explaining that a litigant cannot use Rule 60(b) to void a state-court judgment.

Mr. Gray appealed. This court construed his Rule 60(b) motion as a second or successive § 2254 petition, and it further construed his appeal as a motion for

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2025, which this court received on May 5 (ECF No. 7). These documents are substantively identical. In this order, “COA Motion” refers to ECF No. 3.

<sup>2</sup> Mr. Gray claimed he is a member of the Creek Nation. He did not originally specify whether his alleged crime took place in Indian Country, but he has since asserted as much.

authorization to file that petition. *See Gray v. Bridges*, No. 23-7065, 2024 WL 2747573, at \*1–2 (10th Cir. May 29, 2024). So construed, we denied authorization because we had already held that *McGirt*-based claims do not meet the standard for second or successive § 2254 petitions. *Id.* at \*2.

A few months after our decision, Mr. Gray filed a new motion in the district court. He titled this motion, “Motion for challenging the integrity of habeas [corpus] § 2254 procedural ruling for second and successive, [using] F.R.C.P. 60B(4) and 60B(6).” R. at 44 (capitalization modified). He asserted that he “took great pain[s] not to file a second and successive § 2254” because what he really wanted was Rule 60(b) relief from judgment. *Id.* He went on to reiterate that the state court judgment was void because it never had jurisdiction over him. The district court construed this motion as another attempt at a successive § 2254 petition, over which it lacked jurisdiction because this court had not authorized it.

A little over a week later, Mr. Gray filed another motion with a nearly identical caption to the previous motion, and nearly identical arguments about why he deserves Rule 60(b) relief from the state-court judgment. The district court construed this as yet another attempt at a successive § 2254 petition, and the district court again found that it lacked jurisdiction.

Mr. Gray now appeals from the district court’s most recent order.

## **II. LEGAL STANDARD**

This appeal may not proceed unless this court grants a COA. *See* 28 U.S.C. § 2253(c)(1). To merit a COA, Gray must make “a substantial showing of the denial of a constitutional right.” § 2253(c)(2). This means he “must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). And he must make an extra showing in this circumstance because the district court resolved his motion on a procedural basis, namely, lack of jurisdiction. So he must also show that “jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.*

## **III. ANALYSIS**

Most of Mr. Gray’s COA Motion repeats his arguments about the alleged invalidity of his state-court conviction. As far as we can discern, he makes only two arguments specifically against the district court’s conclusion that his most recent district-court motion is an unauthorized successive habeas petition.

First, Mr. Gray argues the second-or-successive procedural restrictions in § 2244(b) are unconstitutional. He does not develop this argument, however, so we deem it waived. *See, e.g., United States v. Jones*, 768 F.3d 1096, 1105 (10th Cir. 2014) (“[P]erfunctory or cursory reference to issues unaccompanied by some effort at developed argument are inadequate to warrant consideration . . . ”).

Second, Mr. Gray argues the district court could not have correctly viewed his Rule 60(b) motion as a second or successive § 2254 petition because “the first § 2254 doesn’t even exist under a void judgment.” COA Motion at 5. How the district court viewed his Rule 60(b) motion is no longer at issue. That matter was put to rest in the appeal we resolved last year. But construing the COA Motion liberally in light of Mr. Gray’s pro se status, *see, e.g., Clark v. Oklahoma*, 468 F.3d 711, 713 n.1 (10th Cir. 2006), Mr. Gray may have meant to refer to his most recent motion, not to his earlier Rule 60(b) motion. Further construing the COA Motion liberally, Mr. Gray seems to be saying the district court should have treated his original § 2254 proceeding as if it never happened because that proceeding ruled on a state-court judgment that, in his view, never really existed.

Mr. Gray does not cite any authority for the idea that the alleged voidness of a state-court judgment likewise makes any § 2254 proceeding challenging that judgment into a nullity. We have not found any supporting authority either. Taken to its logical conclusion, Mr. Gray’s approach would mean a prisoner could *never* bring a § 2254 challenge (first, second, or otherwise) to a void state-court judgment—even a challenge arguing that the state-court judgment was void for lack of jurisdiction. We therefore conclude there is no debatable issue that would permit us to grant a COA on this question.

**IV. CONCLUSION**

We deny a COA and dismiss this matter.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

FILED

United States Court of Appeals  
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 7, 2025

Christopher M. Wolpert  
Clerk of Court

DARVIN W. GRAY,

Petitioner - Appellant,

v.

CARRIE BRIDGES,

Respondent - Appellee.

No. 25-7023  
(D.C. No. 6:23-CV-00045-JFH-GLJ)  
(E.D. Okla.)

ORDER

Before EID, CARSON, and ROSSMAN, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

**DARVIN W. GRAY,**

**Petitioner,**

v.

**Case No. 23-CV-045-JFH-GLJ**

**CARRIE BRIDGES,**

**Respondent.**

**ORDER**

Before the Court is Petitioner Darvin W. Gray’s (“Petitioner”) “Motion for Challenging the Integrity of Habeas Corpus § 2254 Second and Successive Under F.R.C.P. 60(B)(4) and 60(B)(6)” (“Motion”). Dkt. No. 33. This is now Petitioner’s third purported “Rule 60” motion. *See* Dkt. Nos. 1, 28 and 33. The instant Motion is largely identical to Petitioner’s July 18, 2024 motion. *Compare* Dkt. No. 33 *with* Dkt. No. 28. Petitioner, once again, asserts he is “challeng[ing] the integrity” of “the procedural bar of the second and successive § 2254[.].” Dkt. No. 33 at 1. He maintains he was not given “a chance to amend or withdraw his motion before the 10th Circuit and District Court construed it as a second and successive § 2254.” *Id.* Petitioner continues to contend, under Rule 60(b), his trial court judgment was void because of a lack of subject-matter jurisdiction, arising from his tribal membership. *Id.* at 3.

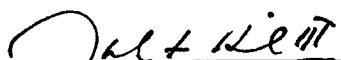
The Tenth Circuit Court of Civil Appeals and this Court have already addressed Petitioner’s position. *See* Dkt. Nos. 27, 30, 32. While styled as a Rule 60 motion, Petitioner’s Motion is an attempt to challenge the state court’s jurisdiction. *See* Dkt. No. 33 at 3. A “claim that the state court lacked jurisdiction over [a prisoner] is an attack on his conviction and sentence,” which must “be brought under § 2254.” *Yellowbear v. Wyo. Att’y Gen.*, 525 F.3d 921, 924 (10th Cir. 2008). Therefore, the instant Motion, once again, is appropriately construed as a second or

successive § 2254 petition. Dkt. No. 27 at 4. “For a district court to have jurisdiction over a second or successive § 2254 petition, the petition must first be authorized by the appropriate circuit court.” *Id.* at 5 (citing 28 U.S.C. § 2244(b)(3)(A)). Petitioner has not received authorization from the Tenth Circuit to file a second or successive petition. *See* Dkt. No. 27 at 5 (“Gray has never received our authorization to file a second § 2254 petition, so the district court lacked jurisdiction to consider the instant motion.”) Accordingly, once again, this Court lacks jurisdiction to consider Petitioner’s Motion. *See id.* (citing *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008)).

IT IS THEREFORE ORDERED that Petitioner’s Motion for Challenging the Integrity of Habeas Corpus § 2254 Second and Successive Under F.R.C.P. 60(B)(4) and 60(B)(6) [Dkt. No. 33] is construed as a second or successive § 2254 habeas petition, without authorization. Accordingly, Petitioner’s Motion for Challenging the Integrity of Habeas Corpus § 2254 Second and Successive Under F.R.C.P. 60(B)(4) and 60(B)(6) [Dkt. No. 33] is DISMISSED for lack of jurisdiction, and Petitioner is denied a certificate of appealability.

IT IS FURTHER ORDERED that any subsequent requests by Petitioner to file a second or successive § 2254 petition without the Tenth Circuit’s authorization, no matter how Petitioner designates such request, will be denied summarily without further analysis.

Dated this 29th day of January 2025.

  
JOHN F. HELL, III  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

**DARVIN W. GRAY,**

**Petitioner,**

**v.**

**Case No. 23-CV-045-JFH-GLJ**

**CARRIE BRIDGES,**

**Respondent.**

**OPINION AND ORDER**

Petitioner Darvin W. Gray (“Gray”) filed a second motion for relief under Rule 60(b) of the Federal Rules of Civil Procedure. Dkt. No. 28. Gray asserts he is “challenging the integrity” of the characterization of his initial Rule 60(b) motion as second and successive. *Id.* at 1. He complains that he was not given “a chance to amend or withdraw his motion before the courts construed it as a second and successive § 2254.” *Id.*

The record shows that on February 2, 2023, Gray filed a motion for relief under Rule 60(b) Dkt. No. 1. This Court found that the motion had been incorrectly construed as a § 2241 habeas petition, when Gray only could challenge his state conviction and sentence in this Court through a § 2254 petition. Dkt. No. 9 at 1-2.

On September 18, 2023, Gray submitted a “Motion for Judicial Notice” to the Tenth Circuit Court of Appeals. Dkt. No. 13. The appellate court found the motion was a misdirected notice of appeal and forwarded it to this Court. Dkt. No. 13-1. On appeal, the Tenth Circuit Court of Appeals found that Petitioner’s Rule 60(b) motion actually was a second or successive § 2254 petition. *Gray v. Bridges*, No. 23-7065, slip op. at 4 (10th Cir. May 29, 2024) [Dkt. No. 27]. The appellate court further construed Gray’s “Motion for Judicial Notice” as an application to file a second or successive § 2254 petition and denied the application. *Id.* at 5-6.

Gray's present motion is repetitive and confusing. He states he is challenging the determination that his Rule 60(b) motion was a second or successive § 2254 habeas petition, citing Rule 60(b). Dkt. No. 28 at 1. He argues that under Rule 60(b), his trial court judgment was void, because of a lack of subject-matter jurisdiction, arising from his tribal membership. *Id.* at 2. He is seeking relief in the form of a "reopening of his case" under Rule 60(b)(4). *Id.* at 4.

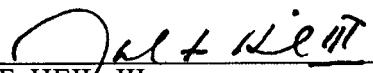
Gray lists both his district court and his circuit court case numbers on his motion. *Id.* at 1. To the extent he is challenging the Tenth Circuit's Order [Dkt. No. 27], that determination "is not appealable and 'shall not be the subject of a petition for rehearing or for a writ of certiorari.'" *Id.* at 6 n.6. If Petitioner is again attempting to initiate another habeas proceeding in this Court, such petition would be a second or successive § 2254 petition. *See id.* at 4. "For a district court to have jurisdiction over a second or successive § 2254 petition, the petition first must be authorized by the appropriate circuit court." *Id.* at 5 (citing 28 U.S.C. § 2244(b)(3)(A)). Because Gray lacks the Tenth Circuit's authorization to file another second or successive petition, this district court lacks jurisdiction to consider his motion. *See id.* (citing *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008)).

A certificate of appealability "is required to appeal a Rule 60(b) motion in a habeas case." *See Johnson v. Patton*, 804 F. App'x 928, 930 (10th Cir. 2020). To obtain a certificate of appealability to challenge the Court's procedural ruling, the petitioner must show both "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court finds

that Petitioner cannot make the required showing, therefore, he is denied a certificate of appealability.

IT IS THEREFORE ORDERED that Gray's second motion for relief under Fed. R. Civ. P. 60(b) [Dkt. No. 28] is construed as a second or successive § 2254 habeas petition. The petition is denied for lack of jurisdiction, and Gray is denied a certificate of appealability.

Dated this 20th day of August 2024.

  
JOHN F. HEIL, III  
UNITED STATES DISTRICT JUDGE