In the

United States Court of Appeals

For the Eleventh Circuit

No. 25-13406

NIKOLAS JAMES COOK,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:23-cv-23101-KMM

ORDER:

Nikolas Cook, a federal prisoner, moves for a certificate of appealability ("COA"), in order to appeal the district court's denial of his pro se Fed. R. Civ. P. 60(b) motion for reconsideration of its earlier denial of his 28 U.S.C. § 2255 motion. In his Rule 60(b) motion, he argues that this Court improperly denied him a COA on the earlier § 2255 motion, by misapplying the COA standard.

APPENDIX "A"

Denial of a Rule 60(b) motion arising from a § 2255 proceeding generally requires a COA. *See Jackson v. Crosby*, 437 F.3d 1290, 1294 (11th Cir. 2005). To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denied a claim on procedural grounds, the movant must show that reasonable jurists would debate whether: (1) the petition states a valid claim of the denial of a constitutional right; and (2) the district court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Rule 60(b)(6) allows a movant to move to reopen the judgment if he can show extraordinary circumstances justifying relief. *See* Fed. R. Civ. P. 60(b)(6); *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005). However, a "Rule 60(b) motion cannot substitute for an appeal." *Scutieri v. Paige*, 808 F.2d 785, 795 (11th Cir. 1987). Rule 60(b)'s limitations apply in habeas proceedings, and district courts may deny Rule 60(b) motions in habeas proceedings for failure to comply with Rule 60(b)'s requirements. *See Gonzalez*, 545 U.S. at 534-35.

Here, reasonable jurists would not debate the district court's denial of Cook's Rule 60(b)(6) claim as an inappropriate use of Rule 60(b)(6). *See Slack*, 529 U.S. at 484. Rule 60(b) motions cannot be used to substitute for an appeal, and whether this Court appropriately applied the COA standard in denying a COA on Cook's § 2255 motion is an issue that could have been raised on appeal to the

Supreme Court. *See Scutieri*, 808 F.2d at 795; *see also Buck v. Davis*, 500 U.S. 100, 105, 116-17 (2017) (appealing the denial of a COA).

Because reasonable jurists would not debate that this was an inappropriate use of a Rule 60(b) motion, Cook's motion for a COA is DENIED. *See Gonzalez*, 545 U.S. at 534-35.

/s/ Nancy G. Abudu

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:23-cv-23101-KMM

NIKOLAS JAMES COOK,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.
_____/

ORDER

THIS CAUSE came before the Court upon Movant Nikolas James Cook's ("Movant") Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60(b). ("Mot." or "Motion") (ECF No. 31). Movant alleges that "the reviewing court of appeals, inverted the statutory order of operations by deciding the merits of the appeal and then denying COA based on the adjudication of the actual merits, placing too heavy a burden on the Petitioner at the COA stage." *Id.* at 1.

Movant was charged[1] with the following: four counts of production of material containing visual depictions of sexual exploitation of minors, in violation of 18 U.S.C. §§ 2251(a) and (e) (Counts 1-4); distribution of material containing visual depictions of sexual exploitation of minors, in violation of 18 U.S.C. § 2252(a)(2) and (b)(1) (Count 5); and possession of material containing visual depictions of sexual exploitation of minors, in violation of 18 U.S.C. § 2252(a)(4)(B) and (b)(2) (Count 6). (CR. ECF No. 16). On July 1, 2021, Cook signed a written plea agreement under

[1] References to Movant's criminal case, *United States v. Cook*, 2:21-cr-14007-KMM, are notated as "CR-ECF No. __".

APPENDIX "B"

which he pled guilty to Counts 4, 5, and 6, and the United States agreed to seek dismissal of Counts 1, 2, and 3 after sentencing. (CR. ECF No. 32). On October 13, 2021, the Court sentenced Cook to 360 months as to Count 4; 240 months as to Count 5; and 240 months as to Count 6; all terms to run consecutively for a total of 840 months in prison. (CR. ECF No. 55).

Movant initiated the instant proceedings by filing a Motion to Vacate pursuant to 28 U.S.C. § 2255 (ECF No. 1) and Memorandum in support thereof (ECF No. 3). The Court denied the Motion to Vacate. (ECF No. 16). Movant appealed. (ECF No. 19). The Eleventh Circuit dismissed his appeal for want of prosecution because Movant failed to comply with the rules on Certificates of Interested Persons and Corporate Disclosure Statements and file a Transcript Order Form within the time fixed by the rules. (ECF No. 25). The Eleventh Circuit reinstated the appeal. (ECF No. 26). The Eleventh Circuit denied Movant's request for a certificate of appealability because he failed to establish that reasonable jurists would find the District Court's denial debatable. (ECF No. 30). Movant has now filed a Motion pursuant to Rule 60(b)(6) alleging that the appellate court incorrectly denied his motion for a Certificate of Appealability. *See generally* Mot.

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a Rule 60(b) motion may properly seek to reopen section 2255 proceedings if it specifically attacks "some defect in the integrity of the federal habeas proceedings." *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005). Here, Movant attacks this Court's and the Eleventh Circuit's denial of his certificate of appealability. *See* Mot; *see also* (ECF No. 16) at 16–17; (ECF No. 30). Movant rehashes his argument for a certificate of appealability, without alleging any "defect in the integrity" of this Court's decision or the Eleventh Circuit's decision. *See generally* Mot. Therefore, Movant is simply attempting to use a Rule 60(b) motion to appeal the denial of his certificate of appealability.

However, "a Rule 60(b) motion cannot substitute for an appeal." *Scutieri v. Paige*, 808 F.2d 785, 795 (11th Cir. 1987). As such, the Motion is improper under Rule 60(b) and must be denied.

Accordingly, UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Motion (ECF No. 31) is DENIED as improper under Rule 60(b) and that no certificate of appealability shall issue. This case shall REMAIN CLOSED.

DONE AND ORDERED in Chambers at Miami, Florida, this 27th day of August, 2025.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

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