

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 22, 2023

Christopher M. Wolpert
Clerk of Court

CHARLES ALFRED ARMAJO, JR.,

Petitioner - Appellant,

v.

STATE OF WYOMING; WYOMING
DEPARTMENT OF CORRECTIONS
MEDIUM CORRECTIONAL
INSTITUTION WARDEN, in his official
capacity, a/k/a Seth Norris; WYOMING
ATTORNEY GENERAL,

Respondents - Appellees.

No. 23-8052
(D.C. No. 2:23-CV-00111-ABJ)
(D. Wyo.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

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

Charles Alfred Armajo, Jr., seeks a certificate of appealability (COA) to appeal the district court’s dismissal of his motion for relief pursuant to Federal Rule of Civil Procedure 60(b) and (d).¹ The district court concluded that the motion was in substance

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

¹ Because Mr. Armajo represents himself, we liberally construe his district court motion and his combined opening brief and application for a COA. *See Hall v. Scott*, 292 F.3d 1264, 1266 (10th Cir. 2002).

an unauthorized second or successive 28 U.S.C. § 2254 application and dismissed it for lack of jurisdiction. We deny a COA and dismiss this matter.

I. Background

The factual and procedural background of Mr. Armajo’s prosecution, conviction, state-court appeal, state-court post-conviction proceeding, and federal § 2254 proceeding is set forth in detail in our order denying a COA as to the district court’s denial of his first § 2254 application. *See Armajo v. Wyo. Att’y Gen.*, No. 22-8049, 2023 WL 2028967, at *1-2 (10th Cir. Feb. 16, 2023) (*Armajo I*), *cert. denied sub nom. Armajo v. Hill*, 143 S. Ct. 2601 (2023). We do not repeat that background information here.

Soon after the Supreme Court declined to review our denial of a COA in *Armajo I*, Mr. Armajo filed what he captioned as a Rule 60 motion in district court. The district court held that the motion was an unauthorized second or successive § 2254 application and dismissed it for lack of jurisdiction.

II. Discussion

The threshold question is whether Mr. Armajo’s motion is a Rule 60(b) motion or a successive § 2254 application. He insists in his combined opening brief and application for a COA that his motion is a Rule 60(b) motion, but we agree with the district court that it is a successive § 2254 application.

It is the relief sought, not the petitioner’s characterization of his pleading, that determines whether it is a second or successive habeas petition. “[A] 60(b) motion is a second or successive petition if it in substance or effect asserts or reasserts a federal basis for relief from the petitioner’s underlying conviction.” *Spitznas v. Boone*, 464 F.3d 1213,

1215 (10th Cir. 2006). A Rule 60 motion should not be treated as a second or successive § 2254 application if it “challenges only a procedural ruling of the habeas court which precluded a merits determination of the habeas application” or “a defect in the integrity of the federal habeas proceeding, provided that such a challenge does not itself lead inextricably to a merits-based attack on the disposition of a prior habeas petition.”

Id. at 1216.

In his motion, Mr. Armajo sought “relief on the ground that his imprisonment and sentence are in violation of his rights under the United States and Wyoming Constitutions as well as their statutes & laws.” R. at 4. He asserted six grounds for relief:

(1) ineffective assistance of appellate counsel; (2) violation of the right “to compel provision of exculpatory evidence,” *id.* at 11; (3) violation of the right to receive transcripts and “other credible evidence that may contain exculpatory evidence,” *id.*; (4) due process violation stemming from counsel’s failure “to obtain crucial evidence including exculpatory evidence,” *id.*; (5) due process violation stemming from the state district court’s failure to prevent trial and appellate counsel from withholding transcripts and other evidence from Mr. Armajo “through the course of their conspiratorial behavior obstruct[ing] [his] ability to exercise the right to counsel,” *id.* at 12; and (6) due process violation stemming from the State Public Defender’s failure to prevent the violations alleged in ground five.

All of these grounds for relief challenged the constitutionality of Mr. Armajo’s conviction. Liberally construed, however, the motion alleged that because he did not have access to the transcripts and evidence he claimed had been withheld during the

state-court proceedings, he could not present his § 2254 claims effectively and the district court could not properly evaluate them. The motion thus suggested that the district court's denial of his § 2254 application was tainted by his lack of access to the information he needed to support his claims. But this argument does not allege that the habeas court made a procedural ruling that precluded a merits determination. And to the extent Mr. Armajo claimed a defect in the integrity of the § 2254 proceeding, the defect stemmed from the impact the alleged withholding of evidence during the state-court proceedings had on the habeas proceeding. To obtain relief on that basis, he needed to prove the merits of his constitutional claims concerning the withholding of evidence. The claim thus "lead[s] inextricably to a merits-based attack on the disposition of" his § 2254 application. *Spitznas*, 464 F.3d at 1216. Accordingly, the district court correctly treated Mr. Armajo's Rule 60 motion as a second or successive § 2254 application. *See id.*

Because Mr. Armajo's motion was a second or successive § 2254 application, he must obtain a COA to pursue an appeal. *See id.* at 1217-18; *see also* 28 U.S.C. § 2253(c)(1)(A). The district court dismissed the construed § 2254 application on procedural grounds, so to obtain a COA Mr. Armajo must show "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).

A prisoner may not file a second or successive § 2254 application unless he first obtains an order from the circuit court authorizing the district court to consider the application. 28 U.S.C. § 2244(b)(3)(A). Absent such authorization, a district court lacks

jurisdiction to address the merits of a second or successive § 2254 application. *See In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) (per curiam).

Mr. Armajo does not dispute that he previously filed a § 2254 application challenging the same conviction, that he was required to obtain our authorization before filing another § 2254 application, and that he failed to do so. He has thus failed to show that jurists of reason would debate the correctness of the district court's procedural ruling dismissing his unauthorized second or successive § 2254 application for lack of jurisdiction.

III. Conclusion

We deny Mr. Armajo's request for a COA and dismiss the matter. We grant his motion to proceed without prepayment of fees and costs.

Entered for the Court

A handwritten signature in black ink, appearing to read 'C. M. Wolpert', written over a horizontal line.

CHRISTOPHER M. WOLPERT, Clerk