

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 5, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GERALD PAUL HEADLEY, JR.,

Defendant - Appellant.

No. 25-8080
(D.C. Nos. 1:18-CV-00193-SWS &
1:16-CR-00226-SWS-1)
(D. Wyo.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **HOLMES**, Chief Judge, **MORITZ** and **FEDERICO**, Circuit Judges.

Defendant Gerald Paul Headley, Jr., a federal prisoner proceeding pro se,¹ seeks a certificate of appealability (COA) to appeal the district court's denial of his Fed. R. Civ. P. 60(b) motion. The motion sought relief from the district court's previous denial of his 28 U.S.C. § 2255 motion to vacate, set

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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 Headley is proceeding pro se, "we liberally construe his filings, but we will not act as his advocate." *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

aside, or correct his sentence. We deny Headley's request for a COA and dismiss this matter.

I

This is the latest of several post-judgment filings through which Headley has sought relief from the denial of his § 2255 motion. In 2016, he was indicted under a four-count indictment that charged him with three counts of aggravated sexual abuse in violation of 18 U.S.C. §§ 2241(c), 2246 and 1153 (Counts One, Two, and Three), and one count of abusive sexual contact in violation of 18 U.S.C. §§ 2244(a)(5), 2246 and 1153 (Count Four). Headley subsequently pled guilty to two counts of abusive sexual contact concerning Counts One and Four and thereafter Counts Two and Three were dismissed. He was sentenced to 180 months imprisonment.

In April 2017 Headley appealed from his judgment and sentence. After the government moved to enforce the appeal waiver in his plea agreement, he voluntarily dismissed his appeal.

Headley then filed a § 2255 motion in November 2018. The motion raised nine claims of ineffective assistance of trial counsel and an additional claim of ineffective assistance of appellate counsel. The district court denied the motion in a thorough and well-reasoned decision and declined to issue a COA. Headley appealed, and this court also denied a COA. *Headley v. United States*, 804 F. App'x 973, 982 (10th Cir. 2020).

Headley next sought relief: (1) in this court, through a motion for authorization to file a second or successive § 2255 motion, and (2) in district court, where he filed a motion for compassionate release. Neither motion was successful.

In June 2023, Headley filed his first Rule 60(b) motion, based on Rules 60(b)(1) and (b)(6). He asserted that he had only recently learned his guilty plea to an offense that was not charged in the indictment made him innocent of that charge. Specifically, he had pled guilty to abusive sexual conduct, which he asserted was not a lesser included offense of the crime of aggravated sexual abuse originally alleged in Count One of the indictment. Headley also claimed he was denied due process because his guilty plea was unknowing and involuntary. The district court concluded his motion fell solely within Rule 60(b)(1) and denied it as untimely. Headley appealed, and this court denied a COA.

A few months later, Headley filed another motion under Rule 60(b)(6). This time, he asserted that he should be relieved from the judgment denying his § 2255 motion because the district court had failed to address all of his original § 2255 claims. Specifically, he claimed that in resolving Ground Two of the motion, which alleged that Headley was threatened and coerced into a faulty plea agreement, the district court had “failed to address whether the plea agreement [was] faulty or not.” R. II at 109. Headley also contended that

because abusive sexual conduct is not a lesser included offense of sexual abuse, his plea agreement was “faulty.” *Id.* at 111.

The district court denied the Rule 60(b)(6) motion and denied a COA. It held that it had already addressed and rejected Headley’s argument in denying his § 2255 motion. In its order denying the § 2255 motion, the district court had addressed Headley’s claim that the plea agreement was faulty because it did not include the statute or elements of Headley’s offenses. It had found that (1) the elements were adequately included in the plea agreement, and (2) the court had explained the charge at Headley’s change-of-plea hearing. To the extent Headley now alleged an *additional* form of “faultiness” based on his “improper lesser-included [offense] argument,” R. II at 168 (internal quotation marks omitted), he had not included that argument in the § 2255 motion. Headley admitted he had discovered the argument in May 2022, years after his § 2255 motion was filed. The district court therefore concluded it had not failed to address Ground Two in its order denying the motion. Headley appealed the denial of his Rule 60(b)(6) motion, and this court again denied a COA.

Headley also filed a motion seeking leave to amend his § 2255 motion, and a supplement to that motion to amend. The district court dismissed that motion, finding it was an unauthorized second or successive § 2255 motion.

In October 2025, Headley filed his most recent Rule 60(b)(6) motion. Once again, he claimed that the district court had failed to address Ground Two of his § 2255 motion. As in his previous Rule 60(b)(6) motion, Headley argued that the district court had not determined “whether the plea agreement is faulty or not”; instead, it had “relie[d] on the Rule 11 [plea] colloquy to deny relief.” R. II at 201. Headley also claimed the district court failed to address Ground Three of his § 2255 motion. He explained that he had argued in Ground Three that the “lesser included offense of Count One in the indictment and plea agreement” did not “match what is alleged in the prosecutor’s statement regarding this specific event in time.” *Id.* at 201-02.

The district court denied the motion, explaining that there were no unaddressed issues that could form the basis for Rule 60(b)(6) relief.² Headley appealed. We remanded for a COA determination, and the district court denied a COA.

² Although the district court noted that a post-judgment motion “is treated like a second-or-successive § 2255 motion if it asserts or reasserts claims of error in the prisoner’s conviction,” R. II at 232 (ellipsis and internal quotation marks omitted), it did not dismiss Headley’s Rule 60(b)(6) motion as an unauthorized second or successive § 2255 motion. Instead, it denied the motion, essentially treating it as a “true” Rule 60(b) motion that asserted a defect in the § 2255 proceedings. *See Spitznas v. Boone*, 464 F.3d 1213, 1215-16 (10th Cir. 2006) (explaining difference between “true” and “second or successive” Rule 60(b) motions). Because we agree that the motion qualifies as a “true” Rule 60(b) motion rather than an unauthorized second-or-successive application, we will conduct our COA analysis on that basis.

II

A COA is required to appeal from “the final order in a proceeding under section 2255.” 28 U.S.C. § 2253(c)(1)(B). A COA “may issue under [§ 2253(c)(1)(B)] only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where, as here, the court denied the filing on procedural grounds, “a COA should issue when the prisoner shows, at least, 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). We may deny a COA on an alternate ground that is supported by the record, even if not relied on by the district court. *See Davis v. Roberts*, 425 F.3d 830, 834 (10th Cir. 2005).

A

Headley argues it is reasonably debatable whether the district court had previously addressed the claims he raised in Ground Two. Concerning that ground, he continues to insist that “[t]o date, the issue of whether the plea agreement is faulty or not has not been decided by a reviewing court.” COA Appl. at 3a. Thus, he argues the district court was required to explicitly discuss whether or not the plea agreement was “faulty.”

In Ground Two of the § 2255 motion, Headley vaguely claimed the plea agreement contained “numerous errors.” R. II at 27. But the only specific fault or error he described was that the plea agreement failed to explicitly mention the elements of abusive sexual contact or the relevant statutes. *See id.* The district court addressed this contention in its § 2255 order, explaining that the plea agreement *did* set forth the offense elements. It also noted that the court had provided a careful explanation of the crimes at the plea colloquy. The district court thus addressed the specific ground for describing the plea agreement as “faulty” that Headley had asserted in the § 2255 motion.

In addition, Headley previously appealed from both the district court’s § 2255 order and the order denying his previous Rule 60(b)(6) motion concerning this issue. On each occasion we denied a COA. Reasonable jurists could not debate whether the district court failed to discuss and resolve Ground Two of the § 2255 motion.

B

Headley’s claim concerning Ground Three is more difficult to discern. In his § 2255 motion, he explained the relevant portion of that claim as follows:

The charge of the lesser included in Count One (1) under § 2244(a)(5) in the Indictment charges specific elements of a crime during a specific event in time. The element contained in the charge does not match what is alleged in the prosecutor’s statement regarding this specific event in time. None of these elements are contained or mentioned anywhere else in the prosecutor’s statement. . . .

Had Defense Counsel read, reviewed, and compared *the indictment and/or plea agreement* with the statute and definitions, alongside the alleged claims, he would have found issues to be challenged.

R. II at 29-30 (emphasis added).

In its order denying § 2255 relief, the district court construed this claim as an assertion that Headley's trial counsel was constitutionally ineffective in failing to challenge the legal sufficiency of the indictment. It denied the claim, concluding that Count One as charged in the indictment was plainly sufficient as a matter of law.

In his current Rule 60(b)(6) motion, Headley asserts the district court misconstrued his argument by focusing on the legal sufficiency of the indictment. He asserts that in his reply concerning his § 2255 motion, he had clarified his argument in Ground Three. As clarified, his argument concerned how the lesser included offense *described in the plea agreement* was inconsistent with the prosecutor's statement of facts. He claimed the district court never reached his specific argument about the plea agreement.

The district court appears to have construed this Rule 60(b)(6) argument as another iteration of Headley's claim that "an improper lesser included offense was included in the plea agreement," which it had already rejected. R. II at 220 (internal quotation marks omitted). The district court ultimately

concluded there were “no . . . unaddressed issues,” including this one, that could support relief under Rule 60(b)(6). *Id.*

Headley argues we should grant a COA because the district court again misunderstood his argument concerning Ground Three. We have carefully examined Headley’s original argument on Ground Three as asserted in his § 2255 motion and his reply, along with his Rule 60(b)(6) motion. As we understand it, his argument relies on a clarification about the basis for Ground Three that he made in the § 2255 reply. In the reply, he explained that his claim was based on the elements of abusive sexual contact as described in his plea agreement, not on Count One as charged in the indictment. He noted those elements included that he knowingly engaged in and caused sexual contact with a person who had not yet attained the age of 12 years by intentionally touching the victim’s genitalia, breasts and buttocks. Headley claimed his trial attorney should have explained to him that the elements stated in the plea agreement were inconsistent with the prosecutor’s statement about the facts of the crime. Specifically, he contended that the only incident described in the prosecutor’s statement that involved touching the victim’s breasts, genital area and buttocks happened when the victim was *already* 12 years old. The statement, he claimed, was inconsistent with the description of the offense in the plea agreement because Headley was pleading guilty to an offense that required that the victim had not yet attained the age of 12 years.

Though Headley included this clarification in his § 2255 reply, the district court does not appear to have discussed this specific point, either when denying Ground Three or when addressing the Rule 60(b)(6) motion. So, Headley may have at least raised a debatable issue concerning whether his Rule 60(b)(6) motion described any unaddressed issues. But even so, he has not made a substantial showing of the violation of a constitutional right, which is also required for issuance of a COA. *See Slack*, 529 U.S. at 484.

Ground Three asserted ineffective assistance of counsel. To establish ineffective assistance of counsel, a movant must show (1) that counsel's representation was deficient because it "fell below an objective standard of reasonableness" and (2) that counsel's "deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

Headley has failed to make a substantial showing that counsel's conduct fell below an objectively reasonable standard. The prosecutor's statement did not indicate that Headley *only* touched the victim's breasts, genital area and buttocks after she was 12 years old. Instead, the statement indicated that the touching *last* happened when she was 12. The offense elements described in the plea agreement specifically stated that the conduct occurred when the victim had not attained the age of 12 and it included a date range for that

conduct.³ In addition, at the change-of-plea hearing, when addressing Count One Headley specifically acknowledged having sexual contact with the victim when she had not yet attained the age of 12. *See* R. I at 63. At the time he made that acknowledgement, he had signed the plea agreement that described his sexual contact as touching the victim’s breasts, genital area and buttocks.⁴ Finally, Headley points to no other evidence that the victim had already reached the age of 12 when he committed the abusive sexual contact.

Given these facts, reasonable jurists would not debate whether Headley’s counsel was constitutionally ineffective based on the alleged inconsistency between the elements described in the plea agreement and the prosecutor’s statement. Headley therefore fails to show his entitlement to a COA concerning Ground Three.

³ The plea agreement stated the abuse occurred between on or about September 6, 2009, to on or about September 5, 2015. The prosecutor’s statement indicated that the victim was born in 2003.

⁴ At the change-of-plea hearing, Headley acknowledged that he signed the plea agreement “after having the opportunity to go over each and every provision with [his] attorney.” R. I at 42.

III

We deny a COA and dismiss this matter.

Entered for the Court

Richard E.N. Federico
Circuit Judge