

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

December 26, 2012

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JASON TODD DAVIS,

Defendant - Appellant.

No. 12-6206
(D.C. No. 5:01-CR-00181-M-2)
(W.D. Okla.)

ORDER DENYING CERTIFICATE OF APPEALABILITY
AND DENYING LEAVE TO FILE A SECOND OR SUCCESSIVE
28 U.S.C. § 2255 MOTION

Before **LUCERO, O'BRIEN**, and **MATHESON**, Circuit Judges.

In 2008, Jason Todd Davis filed a 28 U.S.C. § 2255 motion claiming ineffective assistance of counsel. Approximately two and one half years later he sought to amend the § 2255 motion. The district court denied the relief originally sought and denied leave to amend because the request was not timely presented. Davis sought a Certificate of Appealability (COA) on both issues, which we denied. *United States v. Davis*, 426 F. App'x 622, 625 (10th Cir. 2011).

About a year after our decision, Davis filed a Rule 60(b) motion resurrecting his arguments about the district court's refusal to permit him to amend his § 2255 motion. He included four new claims under § 2255. The district court denied the motion. Davis

appealed from the decision.

A COA is required to appeal from the denial of a true Rule 60(b) motion. *Spitznas v. Boone*, 464 F.3d 1213, 1218 (10th Cir. 2006). Davis did not seek a COA, but we treat his notice of appeal and brief as an implied request for a COA. Fed. R. App. P. 22(b)(2). We deny his request for a COA.

Davis's new § 2255 claims are second or successive, requiring our approval before they can be addressed by the district court. *In re Shines*, 696 F.3d 1330, 1332 (10th Cir. 2012). His claims are utterly without merit; we deny leave to pursue them.

DISMISSED.

Entered by the Court:

Terrence L. O'Brien
United States Circuit Judge