[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 16-12034
Non-Argument Calendar

D.C. Docket No. 8:16-cv-00551-SDM-MAP

PHILIP MOSIER,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(December 21, 2017)

Before ED CARNES, Chief Judge, TJOFLAT, and NEWSOM, Circuit Judges.

PER CURIAM:

Philip Mosier appeals the district court's dismissal of his 28 U.S.C. § 2254 petition as second or successive and its denial of his Federal Rule of Civil Procedure 59(e) motion to alter or amend the judgment.

Mosier pleaded no contest in Florida state court to robbery with a deadly weapon, sexual battery using a deadly weapon, and resisting arrest without violence. In 2004 he was sentenced to 30 years, with 476 days credited for time served. His direct appeal and state post-conviction motions were unsuccessful. In 2011 he filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254, which the district court denied.

Mosier returned to state court several years later and filed a motion under Florida Rule of Criminal Procedure 3.801 seeking one additional day of jail time credit. See Fla. R. Crim. P. 3.801(a) ("A court may correct a final sentence that fails to allow a defendant credit for all of the time he or she spent in the county jail before sentencing . . . ."). The state court granted that motion and ordered that he was entitled to one extra day of credit. Mosier then filed a "motion to enter new judgment and sentence" to reflect the additional day of jail time credit. The state court denied that motion on the ground that an amended judgment was unnecessary because its order granting the Rule 3.801 motion had the "same legal effect as an amended judgment and sentence."

After the state court granted his Rule 3.801 motion, Mosier filed this § 2254 petition attacking his Florida convictions. The district court denied his petition on the ground that it was second or successive and was filed without authorization from this Court. See 28 U.S.C. § 2244(b)(3)(A) ("Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."). Mosier then filed a motion to alter or amend the judgment, which the court denied. This is his appeal.

"We review de novo whether a petition for a writ of habeas corpus is second or successive." Patterson v. Sec'y, Fla. Dep't of Corr., 849 F.3d 1321, 1324 (11th Cir. 2017) (en banc). To determine whether a petition is second or successive, we look to the "judgment challenged." Id. (emphasis and quotation marks omitted). The Supreme Court has held that where "there is a new judgment intervening between . . . two habeas petitions, an application challenging the resulting new judgment is not second or successive." Magwood v. Patterson, 561 U.S. 320, 341, 130 S. Ct. 2788, 2802 (2010). That new judgment "must be a judgment authorizing the prisoner's confinement" to permit a second round of federal habeas review. Patterson, 849 F.3d at 1325 (quotation marks omitted). Mosier contends that his successful Rule 3.801 motion to correct his jail time credit had the effect of

substantively changing his sentence and was the "functional equivalent" of a new judgment, which means that he can pursue this second petition.

That contention fails. Mosier was never resentenced, and his Rule 3.801 motion did not result in a new judgment; indeed, the state court denied his motion for a new judgment. Cf. Magwood, 561 U.S. at 323–27, 130 S. Ct. at 2792–94 (holding that petition was not second or successive where the petitioner was sentenced to death, successfully petitioned for habeas corpus relief, received a new sentence and judgment after resentencing, and then filed the second habeas petition); Insignares v. Sec'y, Fla. Dep't of Corr., 755 F.3d 1273, 1281 (11th Cir. 2014) (concluding that petition was not second or successive where it was the first petition challenging a new sentence and new judgment after resentencing). The award of an additional day of jail credit left Mosier's original 30-year sentence and judgment of confinement unchanged. See Patterson, 849 F.3d at 1325–27 (holding that an order granting petitioner's motion to eliminate chemical castration requirement from his sentence did not trigger new round of federal review, because the state court "never issued a new prison sentence . . . to replace" his original sentence or "issue[d] a new judgment authorizing [his] confinement"). Mosier's argument that he is entitled to another round of federal habeas review because the state court's order had the effect of amending the original judgment is

unpersuasive, as we have rejected the argument that "any order that alters a sentence necessarily constitutes a new judgment." Id. at 1326.

Because the "state court did not issue a new judgment authorizing [Mosier's] confinement when it granted [Mosier's] motion" for additional jail time, his 2004 "judgment remains the only order that commands the Secretary to imprison [him]," which means that the district court correctly determined that this § 2254 petition is second or successive. Id. at 1327; see also Wentzell v. Neven, 674 F.3d 1124, 1128 (9th Cir. 2012) (stating that petition is second or successive where it does not challenge a "new, intervening judgment" entered by the state trial court); In re Lampton, 667 F.3d 585, 589–90 (5th Cir. 2012) (concluding that petition was second or successive where the "district court did not enter an amended judgment of conviction" or impose a new sentence). And the district court did not abuse its discretion in denying Mosier's motion to alter or amend the judgment, which merely rehashed the arguments he made as to why his petition was not second or successive. See Arthur v. King, 500 F.3d 1335, 1343 (11th Cir. 2007) ("A Rule 59(e) motion cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.") (alterations and quotation marks omitted).

AFFIRMED.