[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11875
Non-Argument Calendar

D.C. Docket Nos. 1:16-cv-20296-KMM; 1:11-cr-20557-KMM-1

LAVONT FLANDERS, JR.,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

(May 6, 2021)

Before MARTIN, JORDAN, and BRANCH, Circuit Judges.

PER CURIAM:

Lavont Flanders, proceeding *pro se*, appeals the district court's order

dismissing his Fed. R. Civ. P 60(b)(2) motion as untimely and, alternatively, as an unauthorized 28 U.S.C. § 2255 motion to vacate his sentence. The government has responded by moving for summary affirmance and to stay the briefing schedule.

Summary disposition is appropriate either where time is of the essence, such as "situations where important public policy issues are involved or those where rights delayed are rights denied," or where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). An appeal is frivolous if it is "without arguable merit either in law or fact." *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002).

We review a district court's denial of relief under Rule 60(b) for an abuse of discretion. *Jackson v. Crosby*, 437 F.3d 1290, 1295 (11th Cir. 2006). Rule 60(b) provides relief from a judgment or order based on "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)." Fed. R. Civ. P. 60(b)(2). A Rule 60(b)(2) motion must be made within one year of the entry of the judgment. *See* Fed. R. Civ. P. 60(c)(1). A Rule 60(b) motion is subject to the restrictions of a second or successive habeas petition if the movant is attempting to raise a new ground for relief or to attack a federal court's previous resolution of a claim on the merits, even if "couched in the

language of a true Rule 60(b) motion." *See Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005). A Rule 60(b) motion is to be treated as a successive habeas petition if it: (1) "seeks to add a new ground of relief," or (2) "attacks the federal court's previous resolution of a claim on the merits." *Id.* at 532.

A prisoner may collaterally attack his conviction under § 2255 by filing a motion to vacate on the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack. 28 U.S.C. § 2255(a). Under the provisions of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214 (1996), a prisoner is generally entitled to file only one § 2255 petition. When a prisoner has previously filed a § 2255 motion, he must apply for and receive permission from the appellate court before filing a second or successive § 2255 petition. § 2255(h). Absent the appellate court's permission, the district court lacks jurisdiction to address the petition, and it must be dismissed. *United States v. Holt*, 417 F.3d 1172, 1175 (11th Cir. 2005).

Here, there is no substantial question that Flanders filed an untimely Rule 60(b) motion and, when construed as a 28 U.S.C. § 2255 motion, he filed an unauthorized and successive motion. *See Groendyke Transp., Inc*, 406 F.2d at 1162. We come to that conclusion for two reasons.

First, the district court correctly found that Flanders' Rule 60(b) motion was untimely. Flanders signed his Rule 60(b) motion July 25, 2019, well after the statute of limitations ended on December 4, 2018. *See* Fed. R. Civ. P. 60(c)(1). Though the district court erred in concluding that Flanders' motion was filed in August 2019, the date the motion was filed rather than the date he signed the motion, which is required under the prison mailbox rule, this error was harmless as Flanders' motion was still untimely as filed in July 2019.

Second, the district court did not err in alternatively construing Flanders' motion as a § 2255 motion to vacate because he essentially attacked the validity of his conviction by advancing arguments concerning "newly discovered evidence" in the form of fraud on the court based on the allegedly fraudulent indictments. Further, Flanders previously filed a § 2255 motion, challenging the same convictions, before filing the instant petition without demonstrating permission from our Court to file a second or successive petition. Therefore, the district court lacked jurisdiction to address Flanders's petition. *See Holt*, 417 F.3d at 1175.

Thus, there is no substantial question that the district court properly dismissed Flanders' petition as untimely and as an unauthorized successive petition, and the government's position is correct as a matter of law. *See Groendyke*, 406 F.2d at 1162. Accordingly, the government's motion for summary denial is GRANTED and

the government's motion to stay the briefing schedule is DENIED as moot. All other pending motions are DENIED as moot.