

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-12025
Non-Argument Calendar

D.C. Docket Nos. 7:07-cv-08006-CLS-SGC; 7:05-cr-00321-CLS-SGC-1

JOSEPH R. DICKEY,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama

(May 19, 2021)

Before JILL PRYOR, LUCK, and BLACK, Circuit Judges.

PER CURIAM:

Joseph Dickey, a federal prisoner proceeding *pro se*, appeals the district court's *sua sponte* imposition of a pre-filing injunction after his repeated filings that the court construed as impermissible successive 28 U.S.C. § 2255 motions. Dickey asserts the district court violated his due process rights by issuing the pre-filing injunction without giving him notice and an opportunity to respond. Additionally, he appeals the denial and dismissal of two motions he styled as Federal Rule of Civil Procedure 60 motions.¹ Dickey contends they were not impermissible successive § 2255 motions but rather presented valid claims of actual innocence and ineffective assistance of § 2255 counsel. After review,² we affirm.

I. DISCUSSION

A. Imposition of Pre-Filing Injunction

“Federal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions.” *Procup v. Strickland*, 792 F.2d 1069 1073 (11th

¹ The relevant motions are Dickey's Rule 60 motion for relief from the judgment denying his original § 2255 motion that he filed on August 9, 2019 and Dickey's motion for relief from his § 2255 judgment because of miscarriage of justice filed on March 12, 2020, in which he cited to various rules of civil procedure, including Rule 60.

² We review the district court's decision to impose a filing injunction or restriction for an abuse of discretion. *See Miller v. Donald*, 541 F.3d 1091, 1096 (11th Cir. 2008). We review questions of constitutional law *de novo*. *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1239 (11th Cir. 2018). We review issues of subject matter jurisdiction *de novo*. *Williams v. Chatman*, 510 F.3d 1290, 1293 (11th Cir. 2007).

Cir. 1986) (en banc). While a court may severely restrict a litigant's filings, it cannot completely foreclose a litigant from any access to the courts. *Id.* at 1074; *Martin-Trigona v. Shaw*, 986 F.2d 1384, 1387 (11th Cir. 1993). When devising methods to curtail the activity of particularly abusive prisoners, however, "courts must carefully observe the fine line between legitimate restraints and an impermissible restriction on a prisoner's constitutional right of access to the courts." *Procup*, 792 F.2d at 1072. An injunction is impermissible when it goes beyond what is sufficient to protect the court from a prisoner's repetitive filings and, considering its exceptions, fails to provide meaningful access to the courts. *See Miller v. Donald*, 541 F.3d 1091, 1098 (11th Cir. 2008) (finding an injunction was overbroad because it was not limited to the areas in which the plaintiff had demonstrated a history of abusive litigation).

We have upheld injunctions barring litigants from future filings unless and until the filings were approved by a judge. *See Copeland v. Green*, 949 F.2d 390, 391 (11th Cir. 1991) (upholding an injunction directing the clerk to mark any papers submitted by a frequent litigant as received but not to file the documents unless a judge approved them for filing); *Cofield v. Ala. Pub. Serv. Comm'n*, 936 F.2d 512, 518 (11th Cir. 1991) (finding a pre-filing screening that required plaintiff to send all pleadings to a judge for approval left plaintiff with sufficient access to the courts); *see also Traylor v. City of Atlanta*, 805 F.2d 1420, 1422 (11th Cir.

1986) (upholding an injunction preventing the plaintiff from filing additional complaints against certain defendants based upon a set of factual circumstances that had been litigated and adjudicated in the past).

The district court did not abuse its discretion in fashioning the pre-filing restriction in Dickey's closed § 2255 case. The restriction did not completely foreclose Dickey's access to the courts—he may still file actions outside of this case and may still give proposed filings in this case to the court for a magistrate judge's approval for docketing. *See Martin-Trigona*, 986 F.2d at 1387; *Cofield*, 936 F.2d at 518. And the restriction was properly tailored and limited to the area in which Dickey has demonstrated a history of vexatious litigation—repeated improper attempts to reopen his § 2255 proceedings. *See Miller*, 541 F.3d at 1098; *Copeland*, 949 F.2d at 391.

Further, the pre-filing injunction does not implicate Dickey's due process rights. *See Zipperer v. City of Fort Myers*, 41 F.3d 619, 623 (11th Cir. 1995) (“Procedural due process requires notice and an opportunity to be heard before any governmental deprivation of a property or liberty interest.”). The court imposed a pre-filing restriction where Dickey still has essentially full access to the courts—he can still file separate actions, without limitation, and can still file in this § 2255 case with approval. Thus, there is no meaningful governmental deprivation that

requires notice and an opportunity to be heard. Accordingly, we affirm the pre-filing injunction.

B. Motions

A district court does not have jurisdiction to review a federal prisoner's successive § 2255 motion unless that motion is first certified by the appropriate court of appeals. 28 U.S.C. §§ 2244(b)(3)(A), 2255(h); *Farris v. United States*, 333 F.3d 1211, 1216 (11th Cir. 2003). A Rule 60(b) motion is a successive § 2255 motion if it seeks to add a new ground for relief or attacks the district court's prior resolution of a claim on the merits, but not when it attacks a defect in the integrity of the § 2255 proceedings. *Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005) (addressing a Rule 60(b) motion in the 28 U.S.C. § 2254 context); *Gilbert v. United States*, 640 F.3d 1293, 1323 (11th Cir. 2011) (en banc) (applying *Gonzalez* in the § 2255 context), *overruled on other grounds by McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc.*, 851 F.3d 1076 (11th Cir. 2017) (en banc). Generally, to attack a defect in the integrity of the § 2255 proceedings, and escape treatment as an impermissibly successive § 2255 motion, the Rule 60(b) motion must allege a fraud on the court or a procedural error that prevented the court from reaching the merits of the § 2255 motion. *See Gonzalez*, 545 U.S. at 532 & nn.4-5 (contrasting a challenge to the substance of a ruling on a § 2254 petition with allegations of fraud on the court and erroneous rulings on the failure to exhaust,

procedural default, and the statute of limitations that prevented a resolution on the merits).

An attack based on the habeas counsel's omissions "ordinarily does not go to the integrity of the proceedings, but in effect asks for a second chance to have the merits determined favorably." *Gonzalez*, 545 U.S. at 532 n.5. A district court is not required to grant an evidentiary hearing in a § 2255 proceeding if the case's records conclusively show the prisoner is not entitled to relief or if his claims are patently frivolous. *Rosin v. United States*, 786 F.3d 873, 877 (11th Cir. 2015).

Dickey's arguments about actual innocence and ineffective assistance of counsel do not involve defects in the integrity of the § 2255 proceedings as contemplated by *Gonzalez* or *Gilbert*. Instead, the contentions in both of Dickey's Rule 60 motions took issue with the court's resolution on the merits in the original § 2255 proceedings. Dickey's actual innocence argument—that the court refused to properly hear him and review his claims of actual innocence in the § 2255 proceedings—ignores the fact the district court analyzed his claims of innocence. In fact, the court noted the evidence against Dickey was sufficient and, further, Dickey could not demonstrate a freestanding substantive claim of actual innocence. In other words, the district court concluded the record—including evidence that Dickey submitted—obviated the need to hear from Dickey further or see more purported evidence involving his actual innocence claims. *See* 28 U.S.C.

§ 2255(b); *Rosin*, 786 F.3d at 877. To challenge the district court's decision not to hear from him further regarding actual innocence, Dickey necessarily would have to challenge the conclusion his claims were without merit. Thus, his challenge regarding actual innocence was substantive and not an attack on some defect in the integrity of the federal habeas proceedings. *See Gonzalez*, 545 U.S. at 532.

Similarly, Dickey's ineffective assistance of § 2255 counsel claim is an attempt to relitigate his claim that his trial attorney was ineffective. While he couches his argument in procedural terms—that the court was precluded from reaching the merits because of some procedural problem or because of the ineffectiveness of his § 2255 counsel—Dickey is simply attacking the district court's resolution of the merits of his ineffective assistance of counsel claim. *See Gonzales*, 545 U.S. at 532 n.5. It is unclear how his § 2255 counsel abandoned his ineffective assistance of trial counsel claim, as Dickey argues, because the district court held an evidentiary hearing about it with testimony from his trial attorneys. And Dickey provides no support for his proposition that a district court is somehow precluded from reaching the merits of an ineffective assistance of counsel claim because of a disagreement between the prisoner and his § 2255 counsel about how to best present that claim. Accordingly, we affirm the district court's orders regarding Dickey's August 9, 2019 and March 12, 2020 Rule 60 motions.

II. CONCLUSION

Because the pre-filing restriction does not foreclose Dickey's access to the courts and it was properly tailored, the district court was within its authority to impose such a restriction. The district court did not err by disposing of the two motions because they were improper attempts to relitigate previous claims challenging the validity of Dickey's underlying criminal convictions. Accordingly, we affirm the district court's orders.

AFFIRMED.