

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted February 3, 2023*

Decided February 6, 2023

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-2248

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MICHAEL D. BONTY,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of Illinois.

No. 02-CR-30116-SMY

Staci M. Yandle,
Judge.

ORDER

Michael Bonty, a federal prisoner who has previously collaterally attacked his sentence, sought to attack it again, this time through a frivolous motion citing Federal Rule of Civil Procedure 60(b). The district court properly refused to consider the motion. It was an unauthorized successive collateral attack, which the district court lacked the power to address. Because Bonty makes no substantial showing that the

* We have agreed to decide this case without oral argument because the appeal is frivolous. See FED. R. APP. P. 34(a)(2)(A).

district court erred or that he qualifies for leave to file a successive collateral attack, we deny a certificate of appealability under 28 U.S.C. § 2253(c), deny authorization to proceed under § 2255(h), and dismiss this appeal. And because Bonty has ignored our previous warnings against frivolous filings, we also sanction him.

In 2003, a jury found Bonty guilty of transporting a minor interstate for criminal sexual activity, tampering with a victim, and illegally possessing ammunition. He was sentenced to 660 months in prison. After we affirmed his conviction on appeal, Bonty collaterally attacked his sentence, including through motions under 28 U.S.C. § 2255, all of which were unsuccessful. Now he has filed a motion for relief citing Rule 60(b) of the Federal Rules of Civil Procedure. In this latest attack, he argues (as he did previously) that his counsel was ineffective for failing to contend that his indictment was constructively enlarged. The district court denied the motion. The court explained that Rule 60(b) is not a means to raise a challenge to a criminal conviction and that if it construed his motion under § 2255, it must dismiss the motion as an unauthorized successive collateral attack. Bonty twice moved to reconsider. The district court denied both motions for lack of jurisdiction, concluding again that they were unauthorized successive collateral attacks on Bonty's sentence.

These rulings were correct. If, as here, a Rule 60(b) motion "is really a successive postconviction claim," then the district court must dismiss it for lack of jurisdiction unless the prisoner first obtained our permission to file the motion. *Curry v. United States*, 507 F.3d 603, 604–05 (7th Cir. 2007); *see also Gonzalez v. Crosby*, 545 U.S. 524, 531 (2005); *United States v. Lloyd*, 398 F.3d 978, 980 (7th Cir. 2005). The substance, not the label, of a request for relief controls how a court should treat it. *United States v. Carraway*, 478 F.3d 845, 848–49 (7th Cir. 2007). Otherwise, labelling a collateral attack as a different kind of motion would allow a prisoner to circumvent the jurisdictional limitation on successive habeas actions. *Curry*, 507 F.3d at 604–05.

Bonty's latest post-conviction motions are, in substance, successive postconviction attacks because they seek to invalidate his conviction based on his federal claim of ineffective assistance of counsel; therefore, they fall under § 2255. *Gonzalez*, 545 U.S. at 531. Because Bonty has already filed a § 2255 motion, he needs permission from this court to file a successive collateral attack in district court. 28 U.S.C. § 2255(h); *Carraway*, 478 F.3d at 849. He did not seek our permission. Thus, the district court was correct that it lacked jurisdiction. *Id.* We construe Smith's appellate filings as both an implied request for permission to mount a successive collateral attack, *see Lloyd*, 398 F.3d at 981, and an implied request for a certificate to appeal the district court's

rulings, *see Carraway*, 478 F.3d at 849. But we deny those implied requests. Bonty does not claim to meet the criteria under § 2255(h) for successive collateral attacks (a new, retroactive rule of constitutional law or newly discovered evidence establishing innocence). And he does not make a substantial showing that the district court erred in recognizing his motion as an unauthorized successive collateral attack.

This case is Bonty's latest attempt to use inventive captioning to evade § 2255(h) and attempt to attack collaterally without authorization his two-decade-old conviction. Since his first § 2255 petition, *Bonty v. United States*, No. 05-cv-0797-MJR (S.D. Ill. Nov. 2, 2005), Bonty has challenged his criminal conviction through: two more § 2255 petitions, No. 16-cv-0704-MJR (S.D. Ill. June 27, 2016), No. 19-cv-523-SPM (S.D. Ill. May 20, 2019); a Rule 60(b) motion, No. 05-cv-0797-MJR (S.D. Ill. April 19, 2007); a motion for writ of prohibition, No. 05-cv-0797-MJR (S.D. Ill. June 14, 2007); one petition for writ of audita querela, No. 08-cv-652-MJR (S.D. Ill. Sept. 18, 2008); a "motion for permission to show evidence lawyer was in fact ineffective in advising of right to further appeal after direct appeal", No. 05-cv-0797-MJR (S.D. Ill. June 13, 2013); one petition for writ of error coram nobis, No. 02-cr-30116-SMY (S.D. Ill. March 29, 2017); three § 2255(h) applications, No. 16-2522 (7th Cir. June 17, 2016); *In re Bonty*, No. 17-2413 (7th Cir. July 12, 2017); No. 18-1495 (7th Cir. March 2, 2018); one petition to "recall the mandate," *United States v. Bonty*, No. 03-3244 (7th Cir. Jan. 14, 2019); one petition for the extraordinary writ of error, No. 19-cv-523-SPM (S.D. Ill. July 19, 2021); and finally the purported Rule 60(b) motion and motions for reconsideration now on appeal. All attempts were rejected.

We twice warned Bonty—first, in 2018, No. 18-1495 (7th Cir. March 9, 2018), and again in 2019, No. 03-3244 (7th Cir. Jan. 17, 2019)—that frivolous filings risked monetary sanctions and a filing bar. We make good on that warning and fine Bonty \$500. Until he pays that sum to the Clerk of this court, any collateral attack on his 2003 conviction and resulting sentence that he submits to any federal court of this circuit will be returned unfiled. Any applications for leave to file successive collateral attacks on this conviction and sentence will be deemed denied 30 days after filing unless the court orders otherwise. *See Alexander v. United States*, 121 F.3d 312 (7th Cir. 1997).

We DISMISS the appeal from the district court's judgment, DENY any implied requests for a certification of appealability and for permission to bring a successive collateral attack, and SANCTION Bonty with a fine of \$500.