

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

September 28, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN MANUEL LOPEZ-GARCIA,

Defendant - Appellant.

No. 23-3114
(D.C. Nos. 2:23-CV-02032-JAR &
2:14-CR-20071-JAR-7)
(D. Kan.)

ORDER DENYING CERTIFICATE OF APPEALABILITY*

Before **MATHESON, EBEL, and ROSSMAN**, Circuit Judges.

Juan Manuel Lopez-Garcia, a federal prisoner proceeding pro se,¹ seeks a certificate of appealability (COA) to appeal the district court’s dismissal of his unauthorized second or successive 28 U.S.C. § 2255 motions for lack of jurisdiction. We deny a COA and dismiss this matter.

I. Background

Mr. Lopez-Garcia was convicted of conspiring to possess with the intent to distribute more than fifty grams of methamphetamine and of possessing firearms as an

* This order is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ Because Mr. Lopez-Garcia represents himself, we liberally construe his opening brief and application for a COA. *See Hall v. Scott*, 292 F.3d 1264, 1266 (10th Cir. 2002).

illegal alien. The trial court sentenced him to a life term on the conspiracy count and ten years' imprisonment on the firearms conviction. On appeal, he challenged the reasonableness of his sentences, but this court affirmed. *See United States v. Lopez-Garcia*, 713 F. App'x 785, 787-89 (10th Cir. 2017).

In 2018, Mr. Lopez-Garcia filed his first § 2255 motion. He raised numerous challenges to his conviction and sentence, including claims of ineffective assistance of trial and appellate counsel. The district court denied relief and this court denied a COA. *United States v. Lopez-Garcia*, No. 21-3109, 2022 WL 333138, at *1-2 (10th Cir. Feb. 2, 2022).

Mr. Lopez-Garcia then filed the motions at issue here: a motion asking the district court to reopen his § 2255 proceedings pursuant to Federal Rule of Civil Procedure 60(b) and (d), and an amended § 2255 motion. The district court concluded both motions were unauthorized second or successive § 2255 motions and dismissed them for lack of jurisdiction.

II. Discussion

Mr. Lopez-Garcia must obtain a COA to appeal the district court's ruling. *See United States v. Harper*, 545 F.3d 1230, 1233 (10th Cir. 2008) (holding a federal prisoner must obtain a COA to appeal the district court's dismissal of an unauthorized second or successive § 2255 motion for lack of jurisdiction); *see also* 28 U.S.C. § 2253(c)(1)(B). Because the district court dismissed Mr. Lopez-Garcia's motions on procedural grounds, he must show both "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would

find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). We need not address the constitutional question because reasonable jurists would not debate the district court’s resolution of the procedural one. *See id.* at 485.

A prisoner must obtain this court’s authorization to file a second-or-successive § 2255 motion. *See* 28 U.S.C. §§ 2255(h); 2244(b)(3). Mr. Lopez-Garcia’s first contention in support of his request for a COA is that his Rule 60 motion was not a second or successive § 2255 motion, so was not subject to the authorization requirement.

A Rule 60 motion should be treated as a second or successive § 2255 motion “if it asserts or reasserts claims of error in the prisoner’s conviction.” *United States v. Baker*, 718 F.3d 1204, 1206 (10th Cir. 2013). A Rule 60 motion is not a second or successive § 2255 motion if it “seeks to correct an error in the previously conducted § 2255 proceeding itself.” *Id.* (brackets and internal quotation marks omitted). If a Rule 60 motion is in substance a second or successive § 2255 motion, it is subject to the authorization requirement in § 2255(h). *Id.*

Mr. Lopez-Garcia’s Rule 60 motion sought to reopen his § 2255 proceedings so he could amend his first § 2255 motion to add new claims of ineffective assistance of counsel. He acknowledges that his motion did not “challenge any procedural ruling on his first § 2255 motion” or allege any errors in that proceeding. Aplt. Opening Br. at 5. He also acknowledges that the claims he raised in his Rule 60 motion were “either a merits-based attack” on the denial of his § 2255 motion “or additional grounds in support of his claims of ineffective assistance” of counsel. *Id.* at 5-6. Reasonable jurists would

not debate the correctness of the district court's determination that Mr. Lopez-Garcia's Rule 60 motion was in substance an unauthorized second or successive § 2255 motion. *See Baker*, 718 F.3d at 1206.

Nor would reasonable jurists debate the correctness of the district court's determination that Mr. Lopez-Garcia's amended § 2255 motion was an unauthorized second or successive § 2255 motion. "A district court does not have jurisdiction to address the merits of a second or successive § 2255 . . . claim until this court has granted the required authorization." *In re Cline*, 531 F.3d 1249, 1251 (10th Cir. 2008) (per curiam). Mr. Lopez-Garcia does not dispute that he previously filed a § 2255 motion challenging his conviction and that he did not obtain the required authorization to file another one.

III. Conclusion

We deny Mr. Lopez-Garcia's application for a COA and dismiss this matter.

Entered for the Court

A handwritten signature in black ink, appearing to read 'C. M. Wolpert', written over a horizontal line.

CHRISTOPHER M. WOLPERT, Clerk