

UNITED STATES COURT OF APPEALS **October 8, 2013**
TENTH CIRCUIT
Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LARRY RAIFSNIDER,

Defendant - Appellant.

Nos. 13-3071 and 13-3072

D. Kansas

(D.C. Nos. 6:04-CR-10255-MLB-1
and 6:05-CR-10052-MLB-1)

ORDER AND JUDGMENT*

Before **LUCERO, McKAY, and MURPHY**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of these appeals. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). These cases are therefore ordered submitted without oral argument.

In 2005, Larry Raifsnider pleaded guilty to numerous federal crimes, including kidnapping and possessing a firearm during a crime of violence. His

*This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

attempt to obtain post-conviction relief pursuant to 28 U.S.C. § 2255 was unavailing. *United States v. Raifsnider*, 252 F. App'x 866 (10th Cir. 2007). On January 22, 2013, Raifsnider filed the current *pro se* Motion for Order to Nullify Guilty Plea. To avoid having his motion treated as a second or successive § 2255 motion, Raifsnider contended he was seeking relief from his convictions pursuant to Rule 60(d)(1) of the Federal Rules of Civil Procedure.

Consistent with Raifsnider's characterization of his motion as seeking relief from a criminal judgment, the district court concluded he could not proceed pursuant to Rule 60(d)(1) because the Federal Rules of Civil Procedure apply only in civil proceedings. Accordingly, the court denied the motion. On appeal, Raifsnider argues, *inter alia*, that the district court erred in concluding Rule 60 is only applicable in civil proceedings. The district court's conclusion, however, is undeniably correct. *United States v. McCalister*, 601 F.3d 1086, 1087-88 (10th Cir. 2010).

After review of the appellate filings, the district court's order, and the entire record, we **affirm** the denial of Raifsnider's motion for substantially the reasons stated by the district court and conclude the appeal is wholly frivolous.

Raifsnider's motion to proceed *in forma pauperis* on appeal is **denied** and the fees are now due. *See* 28 U.S.C. § 1915(b).

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge