

October 23, 2014

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JACK DOWELL,

Defendant - Appellant.

No. 14-1277

(D. Colorado)

(D.C. Nos. 1:07-CV-02002-RPM
& 1:01-CR-00395-RPM-3)

ORDER

Before **KELLY, ANDERSON,** and **BACHARACH,** Circuit Judges.

Mr Jack Dowell was convicted in 2003 on federal charges of destroying government property by fire and forcibly interfering with the Internal Revenue Service. After unsuccessfully challenging the conviction on direct appeal and in a motion to vacate the sentence under 28 U.S.C. § 2255, Mr. Dowell moved to reopen the judgment under Fed. R. Civ. P. 60(b)(4), claiming a defect in the § 2255 proceedings. The district court denied the motion, and our court declined to issue a certificate of appealability. Here Mr. Dowell repeats the same arguments in again requesting a certificate of appealability. We again decline to issue the certificate.

Mr. Dowell's Prior Request

The § 2255 motion involved sixteen claims.¹ The federal district court appointed counsel, then denied relief. In the ruling, however, the district court did not rule on some of the claims.

Mr. Dowell invoked Rule 60(b)(4), asking for a ruling on the remaining claims and return to his “original standing” with counsel. The district court denied relief on each claim, but declined to reappoint counsel for Mr. Dowell.

He sought a certificate of appealability, arguing in part that the district court should have reappointed counsel and provided an opportunity to testify. This court denied Mr. Dowell's request for a certificate of appealability and dismissed the appeal. Order Denying Certificate of Appealability, *United States v. Dowell*, No. 13-1357, 2014 WL 1363970 (10th Cir. Apr. 8, 2014) (unpublished).

Mr. Dowell's New Request

Mr. Dowell again seeks a certificate of appealability to appeal the district court's failure to reappoint counsel and reconvene the evidentiary hearing. We deny the request for a certificate of appealability.

In the prior request for a certificate, Mr. Dowell made virtually identical arguments. Our court considered these arguments and denied the request. In his new application, Mr. Dowell has not provided any reason for us to revisit our prior

¹ Mr. Dowell stated there were fifteen claims, but there were actually sixteen.

decision. Accordingly, we deny the request for a certificate of appealability and dismiss the appeal.

In Forma Pauperis

Mr. Dowell seeks not only a certificate of appealability, but also leave to proceed in forma pauperis. With dismissal of the appeal, Mr. Dowell is relieved of the duty to pay the filing fee. Thus, we dismiss his application for leave to proceed in forma pauperis on the ground of mootness. *Johnson v. Keith*, 726 F.3d 1134, 1136 (10th Cir. 2013) (denying leave to proceed in forma pauperis on the ground of mootness upon denial of a certificate of appealability).

Entered for the Court

Robert E. Bacharach
Circuit Judge