[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-10056

Non-Argument Calendar

LARRY JAMES BARBER,

Petitioner-Appellant,

versus

DEPARTMENT OF CORRECTIONS,
STATE OF FLORIDA,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:13-cv-21882-CMA

Before ROSENBAUM, GRANT, and ANDERSON, Circuit Judges.

PER CURIAM:

Larry James Barber, *pro se*, appeals the order denying his Federal Rule of Civil Procedure ("Rule") 60(b) motion, regarding dismissal of his 28 U.S.C. § 2254 habeas petition as successive. He argues that the district court abused its discretion by denying his Rule 60(b) motion to reopen his judgment. He contends that newly discovered evidence shows that a conflict of interest prevented his appellate attorney from arguing that the trial court erred by not instructing the jury on the lesser included offense of robbery with a weapon. He also contends that, but for this error, no reasonable jury would have found him guilty of robbery with a firearm.

We review the district court's denial of a Rule 60(b) motion for an abuse of discretion. *Lambrix v. Sec'y, Fla. Dep't of Corr.*, 851 F.3d 1158, 1170 (11th Cir. 2017).

Rule 60(b) allows a party to seek relief or reopen his case based on the following limited circumstances: (1) mistake or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been discharged; or (6) "any other reason that justifies relief." Fed. R. Civ. P. 60(b). A habeas petitioner seeking relief for "any other reason" under subsection (b)(6) must demonstrate "extraordinary circumstances" justifying

the reopening of the final judgment. *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005) (citations omitted).

The Habeas Corpus Act of 1867 is codified at 28 U.S.C. § 2241, and the requirements of § 2254 apply to all state prisoners in custody pursuant to the judgment of a state court, even if the petition is labeled as a § 2241 petition. *See Medberry v. Crosby*, 351 F.3d 1049, 1055, 1060 (11th Cir. 2003). We decided in *Medberry* that a petitioner may not avoid the requirements of § 2254 simply by labeling the petition as arising under § 2241. *Id.* at 1060. Under 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." Finally, appeals filed after April 24, 1996, are governed by post-AEDPA law as to appellate procedure, regardless of when the case was originally filed in the district court. *Slack v. McDaniel*, 529 U.S. 473, 481-82 (2000).

Here, the district court did not abuse its discretion by denying Barber's Rule 60(b) motion. First, Barber has never disputed that, prior to his 2013 habeas petition, he had filed at least six § 2254 petitions. Second, although Barber filed a § 2241 habeas petition, the court did not abuse its discretion by construing it as a § 2254 petition. *See Medberry*, 351 F.3d at 1060. Moreover, Barber's 2013 petition was unauthorized because he failed to obtain an order from this Court authorizing the district court to consider it. *See* 28 U.S.C. § 2244(b)(3)(A). Thus, the district court did not deny him

due process when it dismissed his petition, because it was improperly filed under § 2241, rather than § 2254. *See Medberry*, 351 F.3d at 1060.

AFFIRMED.