

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 06-15376  
Non-Argument Calendar

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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT MARCH 31, 2008 THOMAS K. KAHN CLERK
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D. C. Docket No. 00-06284-CR-JAL

DAVID I. ALTMAN,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Florida

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**(March 31, 2008)**

Before ANDERSON, BARKETT and PRYOR, Circuit Judges.

PER CURIAM:

David I. Altman, a former federal prisoner proceeding pro se, appeals the district court's denial of his Fed. R. Civ. P. 60(b)(4) motion for relief from his

criminal judgment. Altman was sentenced to 87 months imprisonment and three years of supervised release for knowingly transporting and shipping child pornography in interstate and foreign commerce by computer. On appeal, Altman argues that the term “visual depictions,” as used in his statute of conviction, 18 U.S.C. § 2252A(a)(1), is unconstitutionally ambiguous because it can refer to both pornography that illegally shows actual children and pornography that permissibly uses images that only appear to be children. Alternatively, he argues that if relief is not available under Fed. R. Civ. P. 60(b)(4), this Court should address the merits of his claim under the plain error standard of review.

We generally review the denial of a Rule 60(b) motion for abuse of discretion. Burke v. Smith, 252 F.3d 1260, 1263 (11th Cir. 2001). However, we review de novo a district court’s ruling on a Rule 60(b)(4) motion to set aside a judgment as void. Id.

The Federal Rules of Civil Procedure “govern the procedure in all civil actions and proceedings in the United States district courts.” Fed. R. Civ. P. 1. Rule 60(b) provides that “the court may relieve a party . . . from a final judgment, order, or proceeding . . . [if] the judgment is void.” Fed. R. Civ. P. 60(b)(4). However, Rule 60(b) does not provide for relief from judgment in a criminal case. United States v. Fair, 326 F.3d 1317, 1318 (11th Cir. 2003); United States v. Mosavi, 138 F.3d 1365, 1366 (11th Cir. 1998). In some limited circumstances, Rule 60(b) can provide relief

from an earlier denial of a § 2255 petition. See Gonzalez v. Crosby, 545 U.S. 524, 533-36, 125 S. Ct. 2641, 2648-50 (2005). In other circumstances, a Rule 60(b) motion is treated as a second or successive habeas corpus petition, and is therefore subject to the procedural requirements of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-32, 110 Stat. 1214 (1996). See Felker v. Turpin, 101 F.3d 657, 661 (11th Cir. 1996).

Here, the district court did not err in denying Altman's Rule 60(b) motion to void his criminal judgment because such relief is not available under Rule 60(b). Construing the motion as a successive habeas petition does not afford Altman relief either.<sup>1</sup> Altman filed his Rule 60(b) motion after the denial of his § 2255 petition. Altman's subsequent motion for a certificate of appealability was also denied. Therefore, Altman has not fulfilled the procedural requirements necessary for a successive habeas petition to proceed. See 28 U.S.C. § 2244(b)(3)(A) (2006); Farris v. United States, 333 F.3d 1211, 1216 (11th Cir. 2003) (affirming district court denial of a Rule 60(b) motion construed as a successive § 2255 motion when the defendant had not received authorization to file a successive habeas petition). Finally, because a Rule 60(b) motion is not the proper motion by which to attack a criminal judgment,

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<sup>1</sup>We note that Altman was released from prison while this appeal was pending. Altman is currently under supervised release, which would likely meet the "in custody" requirement of § 2255. United States v. Brown, 117 F.3d 471, 475 (11th Cir. 1997).

we decline to address the merits of Altman's claim under the plain error standard of review. Accordingly, the judgment of the district court is

**AFFIRMED.**