[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 15-14977
Non-Argument Calendar

D.C. Docket Nos. 9:15-cv-81425-DTKH,
9:95-cr-08089-DTKH-2

KEMMYE RICCARDO PARSON,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

(October 5, 2016)

Before TJOFLAT, MARCUS and JILL PRYOR, Circuit Judges.

PER CURIAM:

Kemmye Parson, a federal prisoner proceeding pro se, appeals the district court's order denying his two simultaneously filed motions brought, first, under 28 U.S.C. § 2255 and, second, under Fed. R. Civ. P. 60(b). On appeal, Parson argues that the district court erred by considering his Rule 60(b) motion as a second or successive motion to vacate sentence under § 2255 because his motion was not "substantive." After thorough review, we affirm.

We review de novo the dismissal of a § 2255 motion as second or successive. McIver v. United States, 307 F.3d 1327, 1329 (11th Cir. 2002). Pursuant to § 2255, a prisoner in federal custody may move the court that imposed his sentence to vacate, set aside, or correct the sentence if it was imposed in violation of federal constitutional or statutory law, was imposed without proper jurisdiction, is in excess of the maximum authorized by law, or is otherwise subject to collateral attack. 28 U.S.C. § 2255. However, when a prisoner previously has filed a § 2255 motion to vacate, he must apply for and receive permission from this Court before filing a successive § 2255 motion. Id. § 2244(b)(3), 2255(h).

Rule 60(b) provides:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;

> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). Federal prisoners cannot use Rule 60(b) to "evade the second or successive petition bar . . . by either adding a new ground for relief or attacking the federal court's previous rejection of a claim on the merits." Gilbert v. United States, 640 F.3d 1293, 1323 (11th Cir. 2011) (applying Gonzalez v. Crosby, 545 U.S. 524 (2005), to federal prisoners). However, a Rule 60(b) motion "that asserts or reasserts no claim but instead attacks 'some defect in the integrity of the federal habeas proceedings' is not barred." Id.

Here, the district court did not err in finding that Parson's Rule 60(b) motion was, in substance, an unauthorized and second or successive § 2255 motion. In the motion, Parson claimed that the district court had failed, in violation of Clisby v. Jones, 960 F.2d 925, 936 (11th Cir. 1992) (instructing district courts "to resolve all claims for relief raised in a petition for writ of habeas corpus . . . regardless [of] whether habeas relief is granted or denied"), to address his fifth claim in his

original § 2255 motion. But the record shows that the district court unambiguously ruled on Parson's fifth claim in his original § 2255 motion by adopting the magistrate judge's report and recommendation, which addressed and rejected Parson's fifth claim. Thus, Parson's argument in the Rule 60(b) motion failed to meet any of the criteria in Rule 60(b), the court could have denied Parson's motion due to its plain frivolity. See Fed. R. Civ. P. 60(b).

However, the district court was also entitled to construe Parson's pro se pleading broadly as it did -- as a § 2255 motion. This is because Parson's motion "reassert[ed]" a substantive claim, that his sentence was unlawful (or that the court was otherwise without jurisdiction to sentence him) because the indictment failed to allege the amount of the controlled substance. See Gilbert, 640 F.3d at 1323. Moreover, when the district court construed his pleading as a § 2255 motion, the court also properly recognized that Parson already had one § 2255 motion denied on the merits. As Parson's second § 2255 motion, the motion was second or successive, and the district court did not err in dismissing it as unauthorized. See 28 U.S.C. §§ 2244(b)(3), 2255(h).

AFFIRMED.