

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STANLEY MARTIN,

ORDER

Petitioner,

08-cv-518-bbc

v.

BYRAN BARTOW, Director,
Wisconsin Resource Center,

Respondent.

On June 24, 2011, I denied Stanley Martin's petition for a writ of habeas corpus under 28 U.S.C. § 2254 because he had not shown that Wisconsin denied him his right to due process when it continued his civil confinement under Wis. Stat. ch. 980. I also denied petitioner a certificate of appealability, concluding that petitioner had failed to make a substantial showing of the denial of a constitutional right. Petitioner filed a notice of appeal with the Court of Appeals for the Seventh Circuit. On December 23, 2011, the court of appeals denied petitioner's request for certificate of appealability, his motion for appointment of counsel and his motion for leave to proceed in forma pauperis on appeal.

Now petitioner has filed a motion for relief from judgment under Fed. R. Civ. P. 60(b), challenging the merits of this court's decision dismissing his habeas petition. However, I cannot consider petitioner's motion because it constitutes a successive habeas petition under 28 U.S.C. § 2244(b). As the Supreme Court explained in Gonzalez v.

Crosby, 545 U.S. 524, 533-35 (2005), a Rule 60(b) motion in a collateral proceeding under § 2254 that attacks a district court's decision “on the merits” must be treated as a new “application” for collateral review, and thus as barred by § 2244(b) unless the statutory criteria for sequential collateral litigation are met. See also Phillips v. United States, — F.3d —, 2012 WL 9618, *2 (7th Cir. Jan. 3, 2012). In particular, before filing the application in the district court, petitioner must receive authorization from the Court of Appeals for the Seventh Circuit. 28 U.S.C. § 2244(b)(3)(A). A three-judge panel of the court of appeals may authorize the filing of the second or successive application only if the application presents a claim not previously raised that satisfies one of the two grounds articulated in § 2244(b)(2). Because petitioner has not received authorization from the court of appeals to file the Rule 60(b) motion, this court lacks jurisdiction to entertain it. Burton v. Stewart, 549 U.S. 147, 153 (2007).

ORDER

IT IS ORDERED that petitioner Stanley Martin’s motion for relief from judgment under Fed. R. Civ. P. 60(b), dkt. #82, is DISMISSED for lack of subject matter jurisdiction.

Entered this 5th day of March, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge