

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 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. On February 21, 2012, petitioner filed a motion for relief from judgment under Fed. R. Civ. P. 60(b). I dismissed the motion because it constituted a successive habeas petition under 28 U.S.C. § 2244(b) and petitioner had not received authorization from the court of appeals to file it. Gonzalez v. Crosby, 545 U.S. 524, 533-35 (2005) (holding that Rule 60(b) motion in

collateral proceeding under § 2254 that attacks district court's decision “on the merits” must be treated as new “application” for collateral review, and thus as barred by § 2244(b) unless statutory criteria for sequential collateral litigation are met); Phillips v. United States, 668 F.3d 433, 435 (7th Cir. 2012) (same). On March 12, 2012, petitioner filed a motion in the court of appeals, asking the court to recall its mandate and consider the merits or to authorize him to file a Rule 60 motion in this court. The court of appeals denied the motion on August 20, 2012.

On September 13, 2012, petitioner filed another motion for relief from judgment under Rule 60(b), arguing that the court’s original decision denying his petition for a writ of habeas corpus was based on a misstatement or misunderstanding of the law and facts. Dkt. #85. He also argues that his Rule 60(b) motion is not a successive petition because he is not challenging the “merits” of the court’s decision, as that term is used in Gonzalez. Petitioner is incorrect. He is attempting to challenge the court’s interpretation of facts in the record, the application of the law to those facts and the court’s ultimate denial of his habeas petition. His arguments focus directly on the merits of his petition. For reasons explained already, this court lacks jurisdiction over petitioner’s motion.

ORDER

IT IS ORDERED that petitioner Stanley Martin’s motion for relief from judgment

under Fed. R. Civ. P. 60(b), dkt. #85, is DISMISSED for lack of subject matter jurisdiction.

Entered this 25th day of September, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge