FILED
United States Court of Appeals
Tenth Circuit

August 19, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PHILIP ANDRA GRIGSBY,

Defendant - Appellant.

Nos. 18-3233 & 19-3001
(D.C. No. 6:12-CR-10174-JTM-1)
(D. Kan.)

ORDER AND JUDGMENT*

Before **MATHESON**, **McKAY**, and **BACHARACH**, Circuit Judges.

In these consolidated appeals, Philip Grigsby challenges the district court's denial of his requests to issue a "memorandum opinion" and to seal his case. After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument.

In November 2012, Mr. Grigsby pled guilty to eight counts of sexual exploitation of a minor, one count of possession of child pornography, and one count

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

of being a felon in possession of a firearm. Mr. Grigsby was sentenced to 260 years' imprisonment, and this court affirmed his sentence on appeal. *See United States v. Grigsby*, 749 F.3d 908 (10th Cir. 2014). Included with Mr. Grigsby's sentence was an order that he "not have any contact with the victim and/or her family members to include her mother and brother." (R. Vol. I at 142.)

In December 2017, Mr. Grigsby filed a motion to modify or remove this "no-contact order" on the basis that he had been successfully participating in various programs since his incarceration began. The district court denied Mr. Grigsby's motion in a written order filed on December 12, 2017. This court affirmed the district court's decision. *See United States v. Grigsby*, 737 F. App'x 375 (10th Cir. 2018).

Mr. Grigsby attempted to petition the Supreme Court for a writ of certiorari but received a letter from the Clerk of that Court informing him that his petition was being returned for noncompliance with the rules. In particular, the Clerk's letter stated, "The appendix to the petition does not contain the following documents required by Rule 14.1(i): The opinion of the United States district court must be appended (memorandum opinion)." (R. Vol. I at 288.) A subsequent attempt to re-file his petition was also unsuccessful based on his failure to comply with the rules, and he was similarly instructed that "[t]he opinion of the United States district court must be appended (memorandum and order)." (*Id.* at 290.)

In October 2018, Mr. Grigsby filed a "Motion Requesting Memorandum Opinion" regarding his December 2017 motion. (*Id.* at 285–86.) The district court

denied his request on the basis that the December 12, 2017, order had "fully addressed the issue of modifying the no-contact requirement." (*Id.* at 295.) The court also sent Mr. Grigsby another copy of that order "in the interests of justice." (*Id.* at 296.)

Meanwhile, in August 2018, Mr. Grigsby filed a motion to strike his 28 U.S.C. § 2241 petition, arguing that the District of Kansas should not have filed it because he had addressed it to the District of Arizona, where he was confined. The caption for Mr. Grigsby's motion to strike listed both the civil case number assigned to his § 2241 case and the criminal case number underlying this appeal. Thus, the motion was filed in both cases, and the district court denied it in both.[1]

Finally, in December 2018, Mr. Grigsby filed a motion to seal his case because he was "nearing transfer to a non-sex offender facility where his safety could be in question." (Appeal No. 19-3001 R. Vol. III at 32.) The district court denied this motion, citing to numerous cases discussing the importance of public access to court records. The court additionally noted that Mr. Grigsby had "present[ed] nothing to warrant sealing other than generalized security concerns which might be present in any case involving child sexual abuse." (*Id.* at 39.)

[1] Mr. Grigsby does not appear to challenge the denial of that motion here, instead merely contending that the district court's denial of the same motion twice revealed the judge's bias against Mr. Grigsby. We find that assertion to be without merit: Mr. Grigsby caused the document to be filed in both cases by listing both case numbers on it, and once it was filed in the criminal case the district court was obliged to rule on it. To the extent Mr. Grigsby is attempting to challenge the denial of his motion to strike here, we affirm the district court's ruling.

Mr. Grigsby's first appeal challenges the district court's denial of his request for a "memorandum opinion" regarding his motion to modify or remove the no-contact order. His only argument on this issue is that the district court's December 12, 2017, order did not fully address the issue and "contain[ed] no case law, statutory law, findings of fact or conclusions of law," reflecting the district court's bias against him. (Appeal No. 18-3233 Appellant's Br. at 3.) However, this court has already affirmed the merits of the district court's order on appeal, *see Grigsby*, 737 F. App'x 375, and Mr. Grigsby may not collaterally attack that order now under the guise of asking for a "memorandum opinion" in place of the "order" that addressed his original motion. Nor was the district court required to issue a "memorandum opinion" in place of the "order" it had already filed. Although Mr. Grigsby contends that the district court "ignor[ed] a request from the Clerk of the U.S. Supreme Court" by failing to issue a new "memorandum opinion" (Appeal No. 18-3233 Appellant's Br. at 3), the record does not support his underlying assumption that the problem with his Supreme Court filing was in the formatting or labelling of the district court's December 12, 2017, order, rather than in his failure to attach this order to his Supreme Court petition in the first place.

Mr. Grigsby's second appeal challenges the district court's denial of his motion to seal. On appeal, he contends that his case should be sealed to ensure the victim's privacy as she reaches adulthood, as well as his own safety in prison. In support of these arguments, he cites to 18 U.S.C. § 3771 and *Pansy v. Borough of*

Stroudsburg, 23 F.3d 772 (3d Cir. 1994), and suggests that failure to seal his case may amount to an Eighth Amendment violation.

The government asserts that Mr. Grigsby's notice of appeal was untimely because the district court's order denying the motion to seal was filed on December 12, 2018, and the notice of appeal was filed on December 31, 2018. *See* Fed. R. App. P. 4(b)(1)(A) ("In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days" of the entry of judgment.). Mr. Grigsby has not filed a declaration, nor is there a clear postmark or date stamp, showing that he should benefit from the prison mailbox rule. *See* Fed. R. Civ. P. 4(c)(1).

Nevertheless, even considering the merits of Mr. Grigsby's appeal, the district court did not abuse its discretion in denying the motion to seal. *See Mann v. Boatright*, 477 F.3d 1140, 1149 (10th Cir. 2007) ("Whether judicial records and other case-related information should be sealed or otherwise withheld from the public is a matter left to the sound discretion of the district court."). "[W]e will not disturb the district court's decision to keep the case file public unless we have a definite and firm conviction that it made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances." *Id.* (internal brackets and quotation marks omitted).

Mr. Grigsby did not assert his victim's rights in his motion before the trial court, nor does he have standing to assert her rights in any event. *Cf.* 18 U.S.C. § 3771(e)(2)(B) (When the crime victim is a minor, her legal guardians or representatives "may assume [her] rights under this chapter, but in no event shall the

defendant be named as such guardian or representative."). We additionally note that the victim's full name does not appear in the record of Mr. Grigsby's case. As for Mr. Grigsby's expressed concern about his safety, without evidence to support that concern, the district court did not abuse its discretion in denying his motion seal. *Cf. United States v. Sajous*, 749 F. App'x 943, 944–45 (11th Cir. 2018) ("Without some evidence that sealing the records of Sajous's sentencing proceedings was necessary to protect him and his family's safety, Sajous could not overcome the presumption in favor of allowing the public access to his records.").

For all of the foregoing reasons, and for substantially the same reasons as those given by the district court, we **AFFIRM** the district court's orders denying Mr. Grigsby's motion to strike, motion for a memorandum opinion, and motion to seal.

Entered for the Court

Monroe G. McKay
Circuit Judge