FILED
United States Court of Appeals
Tenth Circuit

July 27, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHRISTOPHER WAYNE WEBB,

Defendant - Appellant.

No. 22-7053
(D.C. No. 6:21-CR-00230-DCJ-1)
(E.D. Okla.)

ORDER AND JUDGMENT*

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

Christopher Wayne Webb, an Oklahoma prisoner proceeding pro se, appeals various district court orders denying him relief after the district court dismissed his prosecution. For the reasons explained below, we dismiss part of this appeal for lack of jurisdiction, and we affirm the remainder.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

I. BACKGROUND & PROCEDURAL HISTORY

In 2012, an Oklahoma court sentenced Mr. Webb to thirty years' imprisonment for the offense of rape by instrumentation.[1] Eight years after Mr. Webb's sentencing, the Supreme Court held Congress never disestablished the Muscogee (Creek) reservation, meaning Oklahoma did not have jurisdiction to try and convict Native Americans for crimes committed there. *See McGirt v. Oklahoma*, 140 S. Ct. 2452, 2459–60 (2020). The Oklahoma Court of Criminal Appeals (OCCA) soon extended *McGirt*'s reasoning to the other reservations in Oklahoma and began applying *McGirt* retroactively to vacate relevant convictions, including convictions no longer pending on direct appeal. *See State ex rel. Matloff v. Wallace*, 497 P.3d 686, 689 & n.3 (Okla. Crim. App. 2021) (summarizing the OCCA's initial reaction to *McGirt*), *cert. denied sub nom. Parish v. Oklahoma*, 142 S. Ct. 757 (2022).

Mr. Webb is Native American and his offense took place in Bryan County, Oklahoma, within the borders of the Choctaw Nation. In June 2021, the federal government sought and obtained an indictment charging him with sexual abuse in Indian country. Mr. Webb was then taken into federal custody.

In August 2021, the OCCA partially reversed course. Although it "reaffirm[ed]" its application of *McGirt* to other reservations in Oklahoma, it held "that *McGirt* and [the OCCA's] post-*McGirt* decisions recognizing these reservations shall not apply retroactively to void a conviction that was final when *McGirt* was

[1] Okla. Stat. tit. 21, § 1111.1.

decided." *Matloff*, 497 P.3d at 689. The court overruled "[a]ny statements, holdings, or suggestions to the contrary in [its] previous cases." *Id.*

Because Mr. Webb's conviction had become final before *McGirt*, *Matloff* foreclosed the possibility of an Oklahoma court vacating Mr. Webb's conviction on *McGirt* grounds. Thus, in October 2021, the government moved to dismiss the federal indictment against Mr. Webb without prejudice. The district court granted that motion the next day.

The case lay dormant until June 2022, when Mr. Webb began filing a series of pro se motions. Specifically, between June and October 2022, he filed ten motions, each grounded in a theory that Oklahoma is now unlawfully holding him in custody because: (1) *McGirt* should be applied retroactively to final convictions (contrary to the OCCA's holding in *Matloff*); and (2) Oklahoma effectively admitted the invalidity of his state conviction—and therefore permanently relinquished all jurisdiction over him—when it agreed to transfer him to federal custody on the federal indictment. Mr. Webb invoked various authorities to justify these motions, such as Federal Rule of Civil Procedure 60(b) and the writ of coram nobis. He did not invoke the habeas statute, 28 U.S.C. § 2254.

The district court struck the first six of these motions by explaining, "The Indictment in this matter has been dismissed and the case has been closed." R. vol. I at 7, 8. For the last four motions, the district court entered an order explaining it had struck the previous six motions because it was "without jurisdiction to grant [them]," and the four new motions would "likewise be stricken." *Id.* at 55.

The court entered that order on October 6, 2022. Mr. Webb filed his notice of appeal on October 19, 2022.

II. ANALYSIS

Judging from Mr. Webb's notice of appeal and his appeal briefs, he specifically challenges:

- the district court's October 2021 order granting the government's motion to dismiss his indictment without prejudice;
- the district court's June 2022 order striking the first of his ten pro se motions described above;
- the district court's October 2022 order striking two more of the pro se motions described above.

The government argues that Mr. Webb did not timely appeal the district court's October 2021 order, *see* Fed. R. App. P. 4(b)(1)(A)(i) (requiring criminal defendants to appeal within 14 days), so this court should dismiss that part of his appeal as untimely. *See United States v. Garduño*, 506 F.3d 1287, 1290–91 (10th Cir. 2007) (holding that Rule 4(b)(1)(A) is not jurisdictional, but it is a claim-processing rule the court must enforce if the government properly raises it). We agree. Mr. Webb's October 2022 notice of appeal is far too late to appeal an October 2021 order.

It appears Mr. Webb is also too late to appeal the June 2022 order, but the government does not make this argument, so it forfeits the objection. *See United States v. Lantis*, 17 F.4th 35, 38 n.3 (10th Cir. 2021). We could enforce Rule

4(b)(1)(A) ourselves, but we generally will not unless there has been "inordinate delay" and reaching the issue raises "problems of judicial resources or administration." *Id.* We see neither problem here, so we will overlook the lateness of Mr. Webb's appeal from the June 2022 order. And there is no question Mr. Webb appealed on time from the district court's October 2022 order. Thus, we may examine the merits of the district court's June and October 2022 orders.

In this light, the question for us is whether the district court correctly struck Mr. Webb's pro se motions for lack of jurisdiction. The answer is yes, but we are not sure we reach that answer for the same reasons as the district court. The district court's explanation—dismissing Mr. Webb's first six motions because the case was closed, then later explaining it dismissed them for lack of jurisdiction and "likewise" dismissing the remaining four motions, R. vol. I at 55—suggests the district court believed it lacked jurisdiction because Mr. Webb's case is closed. If this was the basis of the district court's decision, we are skeptical that a district court lacks jurisdiction over a post-closure motion merely because it is filed post-closure. But we will not explore that further because the district court certainly lacked jurisdiction over these specific motions.

As discussed, all of Mr. Webb's pro se motions asked for release from Oklahoma prison because, in Mr. Webb's view, *McGirt* invalidated his conviction. Although he did not invoke 28 U.S.C. § 2254, his arguments fell squarely within it. *See* 28 U.S.C. § 2254(a) (authorizing federal courts to "entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a

State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States"); *see also Gonzalez v. Crosby*, 545 U.S. 524, 530–31 (2005) (holding that the courts of appeals are "correct" to treat a nominal Rule 60(b) motion as "in substance a successive habeas petition" when it "assert[s] [a] federal basis for relief from a state court's judgment of conviction").

Mr. Webb previously brought a § 2254 petition challenging his Oklahoma conviction. *See Webb v. Allbaugh*, 703 F. App'x 655, 658–59 (10th Cir. 2017) (describing Mr. Webb's first § 2254 petition). He cannot bring another one without this court's permission. *See* 28 U.S.C. § 2244(b)(3)(A). And he cannot avoid this requirement by invoking Rule 60(b). *See Spitznas v. Boone*, 464 F.3d 1213, 1215 (10th Cir. 2006) ("[A Rule] 60(b) motion is a second or successive [§ 2254] petition if it in substance or effect asserts or reasserts a federal basis for relief from the petitioner's underlying conviction."); *United States v. Nelson*, 465 F.3d 1145, 1149 (10th Cir. 2006) (in the § 2255 context, stating "[i]t is the relief sought, not [the] pleading's title" that matters). For this reason, the district court correctly refused to exercise jurisdiction over Mr. Webb's motions.[2]

III. CONCLUSION

We dismiss the portion of this appeal challenging the district court's October 2021 order dismissing his prosecution without prejudice. We otherwise affirm. We

[2] The district court also lacked jurisdiction over Mr. Webb's coram nobis motion because "federal courts have no jurisdiction to issue writs of *coram nobis* with respect to state criminal judgments." *Davis v. Roberts*, 425 F.3d 830, 836 (10th Cir. 2005).

grant Mr. Webb's motion to proceed on appeal without prepayment of costs or fees. We deny his motion to supplement as moot.

Entered for the Court

Veronica S. Rossman
Circuit Judge