FILED
United States Court of Appeals
Tenth Circuit

April 14, 2017

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: RAYMOND L. ROGERS, Petitioner.	No. 17-3063 (D.C. No. 6:10-CR-10186-JTM-1) (D. Kan.)

ORDER

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

Raymond Rogers petitions this court for a writ of mandamus ordering the district court "to issue a final decision on [his] 28 U.S.C. § 2255 motion to Vacate which has been pending in the District Court since November 25th, 2013." Pet. at 1. Because the district court did issue such a decision on December 9, 2014, unconditionally denying the § 2255 motion *in toto*—a decision from which Mr. Rogers has already taken an appeal, *see United States v. Rogers*, 599 F. App'x 850, 851 (10th Cir.) (denying certificate of appealability), *cert. denied*, 136 S. Ct. 214 (2015)—we deny the petition.

Mr. Rogers' overarching complaint is that the district court's December 9, 2014, decision failed to consider some of the claims he had made in the § 2255 motion, and he wants this court to order the district court to augment that decision with the allegedly missing analysis. That is an issue he could have raised on appeal from the order, which he apparently did not, or in a motion under Fed. R. Civ. P. 60(b), which he in fact did. The district court denied the Rule 60(b) motion in another final order, which Mr. Rogers also appealed, *see United States v. Rogers*, 657 F. App'x 735 (10th Cir. 2016) (denying

certificate of appealability), *cert. denied*, 137 S. Ct. 680 (2017). He now inappropriately seeks to use mandamus as a means to yet again challenge the merits of the district court's December 9, 2014, order. *See generally Farmland Nat'l Beef Packing Co. v. Stone Container Corp. (In re Stone Container Corp.)*, 360 F.3d 1216, 1219 (10th Cir. 2004) (noting "mandamus is not a substitute for an appeal").

The faulty premise underlying Mr. Rogers' petition is his belief that an order denying a § 2255 motion is a nonfinal decision if the district court does not specifically discuss a claim asserted in the motion. That is incorrect. A *partial adjudication* of a § 2255 motion—purporting to resolve only some of its claims and not formally disposing of the motion itself—would not be final under Fed. R. Civ. P. 54(b). But the district court's December 9, 2014, order formally denied Mr. Rogers' § 2255 motion without qualification. *See United States v. Rogers*, No. 6:10-cr-10186-01-JTM, 2014 WL 6977405, at *15 (D. Kan. Dec. 9, 2014). That is clearly a final decision—as this court's disposition of his resultant appeal reflects. In addition, we note that this court specifically held on Mr. Roger's Rule 60(b) appeal that in denying the § 2255 motion "the district court considered Rogers' claims, discussed the claims, and adequately addressed Rogers' arguments." *Rogers*, 657 F. App'x at 738. In short, the instant mandamus petition is procedurally inappropriate and substantively groundless.

The petition for a writ of mandamus is denied. Mr. Rogers' motion for leave to proceed without prepayment of fees is granted, but we remind him that he remains obligated to pay the full filing fee under 28 U.S.C. § 1915(a)(1), (b).

Entered for the Court

ELISABETH A. SHUMAKER, Clerk