

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 4-89-82(5) (DSD)
Civil No. 99-28(DSD)

JOHN GREGORY LAMBROS,)	
)	
Petitioner,)	
)	
v.)	OPPOSITION OF THE UNITED STATES
)	TO PETITIONER'S MOTION TO
UNITED STATES OF AMERICA,)	VACATE JUDGMENT DUE TO
)	INTERVENING CHANGE IN
Respondent.)	CONTROLLING LAW

Petitioner John Gregory Lambros has filed a motion to vacate one or more of this Court's previous orders in this case (the petition is unclear which order or orders). The request should be denied for lack of jurisdiction because this Court's order denying Lambros' underlying petition as a successive section 2255 petition already has been affirmed by the Eighth Circuit Court of Appeals and the Supreme Court has denied certiorari. Furthermore, contrary to Lambros' argument, there has been no change in the law that would warrant the relief Lambros requests, even assuming the Court had jurisdiction.

FACTS

This motion arises out of Lambros' fifth attempt to collaterally attack his 1993 federal conviction for cocaine trafficking. Lambros filed the present petition on April 24, 2001, styling it as a petition pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure. He challenged his sentence on the ground that Judge Renner, who presided over Lambros' 1997 resentencing, should have recused himself because he is a former U.S. Attorney.

In an order dated March 8, 2002, this Court ruled that the Rule 60(b)(6) petition was, in fact, a successive petition under 28 U.S.C. § 2255. Since Lambros had received no Court of Appeals authorization to file a successive petition, this Court ruled that it lacked jurisdiction over the petition.

Lambros then sought a certificate of appealability. In an order dated May 29, 2002, this Court denied a certificate of appealability, finding that the issues presented are not debatable among reasonable jurists.

Lambros then sought review in the Eighth Circuit Court of Appeals. In a decision dated July 1, 2002, the Eighth Circuit ruled as follows:

John Gregory Lambros appeals the District Court's denial of his motion under Federal Rule of Civil Procedure 60(b)(6). For the reasons stated by the District Court, the judgment is affirmed. See 8th Cir. R. 47(B).

(Attachment 1). Thus, it is clear that the Eighth Circuit decided Lambros' appeal on the merits, even though this Court had not granted a certificate of appealability.

Lambros then sought review in the United States Supreme Court. On February 24, 2003, the Supreme Court denied certiorari. (Attachment 2). Lambros' request for Supreme Court rehearing was denied two months later. Id.

ARGUMENT

It is not clear what relief Lambros is seeking from this Court. On page 1 of his motion, he requests this Court "to VACATE this court's judgments and/or the Eighth Circuit Court of Appeals judgment in this action" At the end of his motion, however, he states that he is "only requesting this court to . . . grant Movant Lambros a CERTIFICATE OF APPEALABILITY (COA) in this action" (Emphasis in original).

Assuming all Lambros wants from this Court now is a certificate of appealability, his request is moot. The Eighth Circuit already reviewed this Court's denial of Lambros' Rule 60(b)(6) petition on the merits and affirmed. The Supreme Court then denied certiorari. Granting a certificate of appealability for an appeal that already has been rejected on the merits would be pointless.

To the extent Lambros is asking this Court to vacate its original decision denying the Rule 60(b)(6) petition as well as the Eighth Circuit's affirmance of that decision, the request also should be denied -- even assuming for the sake of argument that this Court had authority to overrule the Court of Appeals. Lambros bases this request on an alleged change in the applicable law, but neither of the cases Lambros relies upon supports his requested relief.

The first case Lambros relies upon is Miller-El v. Cockrell, 537 U.S. 322 (2003), in which the Supreme Court held that the standard for issuance of a certificate of appealability is whether the issue is debatable among reasonable jurists. This case does not help Lambros because the Eighth Circuit resolved Lambros' appeal on the merits. Whether or not this Court used an improper standard for issuance of a certificate of appealability is therefore a moot point. Furthermore, the test enunciated by the Supreme Court is exactly the same test this Court used in considering Lambros' request for a certificate of appealability in any event.

Lambros also relies on Justice Steven's dissent from the denial of certiorari in Abdur'Rahman v. Bell, 123 S. Ct. 594 (2002) (per curiam), in which Justice Stevens discussed under what circumstances a Rule 60(b)(6) petition should be considered to be a successive habeas petition. This case also does not help Lambros because it is a dissenting opinion of a single justice and is not controlling. Moreover, the case is distinguishable on its facts. After Abdur'Rahman's habeas petition was denied on procedural grounds for failure to exhaust state remedies, Abdur'Rahman brought a Rule 60(b) motion asserting that there had been a change in the law regarding whether he needed to exhaust his state remedies before seeking federal relief. The Rule 60(b) motion was treated as a successive habeas petition and denied for that reason. While

While Justice Stevens thought that the 60(b) petition was not the functional equivalent of a successive habeas petition because it was not a new attack on Abdur'Rahman's conviction or sentence, 123 S. Ct. at 598, his view, whether right or wrong, has no bearing on the present case. Lambros' Rule 60(b)(6) petition, unlike Abdur'Rahman's, was an independent freestanding attack on Lambros' sentence. It sought to invalidate Lambros' sentence on the ground that Judge Renner should have recused himself because he had been U.S. Attorney years before. Thus, the limited exception advocated by Justice Stevens, even if it were controlling law, is inapplicable to Lambros' situation.

In summary, this Court lacked jurisdiction over Lambros' Rule 60(b)(6) petition because it was, in fact, a successive section 2255 petition for which Lambros had received no Court of Appeals authorization. The Eighth Circuit agreed with that assessment and the Supreme Court denied certiorari. Since this Court had no jurisdiction over Lambros' original petition, it likewise has no jurisdiction to consider Lambros' present motion. The motion should be denied on that basis.

Respectfully submitted,

Dated: July 7, 2003

THOMAS B. HEFFELFINGER
United States Attorney



BY: JEFFREY S. PAULSEN
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This case was not selected for publication in the Federal Reporter.

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United States Court of Appeals,
Eighth Circuit.

UNITED STATES of America, Appellee,
v.
John Gregory LAMBROS, Appellant.

No. 02-2026.

Submitted June 25, 2002.
Filed July 1, 2002.

Appeal from the United States District Court for the District of Minnesota.

Before WOLLMAN, FAGG, and MORRIS
SHEPPARD ARNOLD, Circuit Judges.

[UNPUBLISHED]

PER CURIAM.

**1 John Gregory Lambros appeals the district court's [FN1] denial of his motion under Federal Rule of Civil Procedure 60(b)(6). For the reasons stated by the district court, the judgment is affirmed. See 8th Cir. R. 47B.

FN1. The Honorable David S. Doty, United States District Judge for the District of Minnesota.

40 Fed.Appx. 316, 2002 WL 1402099 (8th Cir.(Minn.))

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Supreme Court of the United States

John G. LAMBROS, petitioner,

v.

UNITED STATES.

No. 02-7346.

Feb. 24, 2003.

Rehearing Denied April 21, 2003.

See --- U.S. ----, 123 S.Ct. 1825.

Case below, 40 Fed.Appx. 316.

Petition for writ of certiorari to the United States
Court of Appeals for the Eighth Circuit denied.

123 S.Ct. 1255 (Mem), 154 L.Ed.2d 1032, 71 USLW
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