

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

Case No. 99-10023-02-JTM

LEO D. GRAHAM, JR.,  
Defendant.

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MEMORANDUM AND ORDER

This matter is before the court on the Defendant's "Motion Under Fed.R.Civ.P. 60(b)." Although styled as a Rule 60(b) motion, the defendant's motion is essentially a motion for reconsideration of this court's March 21, 2007 Order denying his prior § 2255 motion (Dkt. 270), the court determining following an evidentiary hearing that Graham's counsel was not constitutionally ineffective with respect to investigation of the state detainer, and, in any event, Graham suffered no actual prejudice.

These findings were substantially affirmed on appeal, the Tenth Circuit noting with respect to the issue of prejudice that "Graham himself concedes

[that] there was no doubt as to his guilt with respect to the armed bank robbery charge.” (Dkt. 282, at 15).

While Graham seeks to present his claim under the coloring of Rule 60(b) by citing the Tenth Circuit's July 5, 2006 remand (Dkt. 243) for an evidentiary hearing, the current motion remains in essence a successive § 2255 claim, revisiting the merits of issues previously advanced and denied, rather than a “true” 60(b) motion. *See Spitnas v. Boone*, 464 F.3d 1213, 1215-16 (10th Cir. 2006). To the extent Graham does present any true claim under Rule 60(b), the court again finds the counsel was not constitutionally ineffective, and that Graham suffered no prejudice and denies the motion. The core of the motion, however, is a successive § 2255 claim, and is hereby referred to the Tenth Circuit for authorization under 28 U.S.C. § 2244(b)(3).

IT IS SO ORDERED this 6th day of December, 2012.

s/ J. Thomas Marten  
J. THOMAS MARTEN, JUDGE