

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

THOMAS WOODBERRY,

Petitioner,

v.

CASE NO. 03-3409-SAC

STATE OF KANSAS, et al.,

Respondents.

O R D E R

This matter is before the court on petitioner's combined motion for relief from judgment and motion to appoint counsel (Doc. 24) and his motion for leave to proceed in forma pauperis (Doc. 25).

This habeas corpus action was transferred to the United States Court of Appeals as a successive petition pursuant to 28 U.S.C. 2244(b)(1) in July 2004. That court denied authorization to proceed in September 2004.<sup>1</sup>

Petitioner filed the present motion for relief from judgment in March 2005. He asserts that respondents have committed fraud and have misrepresented the facts, resulting in the wrongful dismissal of this matter.

The Antiterrorism and Effective Death Penalty Act of 1996

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<sup>1</sup>A copy of that order is attached.

(AEDPA) introduced the provision requiring authorization from the appropriate federal court of appeals to pursue a second or successive petition. 28 U.S.C. 2244(b)(1). It is contrary to the bar on successive applications to allow a petitioner to present claims pursuant to Rule 60(b), and the court concludes petitioner should not be permitted to avoid the statutory restrictions by filing a motion for relief from judgment following the denial of authorization to proceed in this matter. See Lopez v. Douglas, 141 F.3d 974, 975 (10<sup>th</sup> Cir. 1998) ("Rule 60(b) cannot be used to circumvent restraints on successive habeas petitions")(internal quotation and punctuation omitted).

IT IS THEREFORE ORDERED petitioner's combined motion for the appointment of counsel and for relief from judgment (Doc. 24) and his motion for leave to proceed in forma pauperis (Doc. 25) are denied.

IT IS FURTHER ORDERED that petitioner shall seek leave of the court before he submits any other pleading in this action. Any such request shall reference the present order. The failure to comply with this direction may result in the striking of the pleading without prior notice to the petitioner.

A copy of this order shall be transmitted to the petitioner.

**IT IS SO ORDERED.**

DATED: This 17<sup>th</sup> day of July, 2005, at Topeka, Kansas.

S/ Sam A. Crow  
SAM A. CROW  
U.S. Senior District Judge