

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Case No. 02-5105

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

IN RE BILLY RAY IRICK,

Petitioner.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

ON APPEAL FROM THE  
UNITED STATES DISTRICT  
COURT FOR THE EASTERN  
DISTRICT OF TENNESSEE

ORDER

BEFORE: BATCHELDER, Chief Judge; SILER and GILMAN, Circuit Judges.

This case is before our court on a transfer from the district court under Fed. R. Civ. P. 60(b) because at the time of the transfer, our precedent required that it be treated as a second or successive federal habeas corpus petition under *McQueen v. Scroggy*, 99 F.3d 1302, 1335 (6th Cir. 1996), which has since been overruled by *In re Abdur'Rahman*, 392 F.3d 174 (6th Cir. 2004) (en banc), *vacated sub nom Bell v. Abdur'Rahman*, 545 U.S. 1151 (2005). This motion's tangled procedural history has led to an extended delay in ruling on it. After Irick timely filed the Rule 60(b) motion in his original habeas case, the district court properly transferred it under the then-applicable law. Irick then filed a motion for a second or successive federal habeas petition in support of his transferred Rule 60(b) motion. At that time Irick's appeal of his original habeas case (No. 01-5638) was already before us. Due to pending dispositive decisions in other cases, we held both this motion and the original appeal in abeyance on July 1, 2002. We removed the original appeal from abeyance on April 3, 2006 and issued a final judgment on May 12, 2009. During that time, *In re Abdur'Rahman*

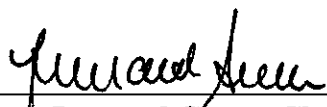
02-5105, *In re Billy Ray Irick*

was also decided. No. 02-6547/6548 (6th Cir. filed Jan. 18, 2008). With those two obstacles removed, we can now rouse this motion from its long slumber and decide it.

Because *McQueen* is no longer applicable, *see Gonzales v. Crosby*, 545 U.S. 524 (2005), the district court is no longer required to transfer the Rule 60(b) motion to this court and may proceed to rule on that motion in the first instance.

Therefore, the motion for leave to file a second or successive habeas corpus petition is removed from abeyance, the motion is denied as unnecessary, and this case is remanded to the district court to rule on Irick's Rule 60(b) motion.

**ENTERED BY ORDER OF THE COURT**

  
\_\_\_\_\_  
Leonard Green, Clerk