

NOT RECOMMENDED FOR PUBLICATION

Nos. 98-6568/6569; 01-6487; 01-6504

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**

**FEB 11 2002**

LEONARD GREEN, Clerk

ABU-ALI ABDUR RAHMAN,

Petitioner - Appellant.

v.

RICKY BELL, Warden.

Respondent - Appellee.

**O R D E R**

Before: SILER, BATCHELDER, and COLE, Circuit Judges

These cases are before the court upon the motions of the petitioner to withhold issuance of the mandate in Nos. 98-6568/6569, the appeal and cross-appeal from the decision of the district court on the application for a writ of habeas corpus, and to rehear the cases en banc or remand to the district court for further proceedings. Petitioner has also moved that the court hear en banc No. 01-6504, his appeal from the judgment of the district court finding his Rule 60(b) motion to be a second or successive habeas corpus petition subject to 28 U.S.C. §2244 and transferring it as such to this court, and to consolidate it with the pending motions in Nos. 98-6568/6569, the latter request having been the subject of a supplemental motion filed February 8, 2002. Additionally, petitioner has asked for rehearing en banc of the panel's January 18, 2002 order denying, *inter alia*, his request for a certificate of appealability in No. 01-6504; petitioner has supplemented

that request for en banc review with a statement of additional authority. Finally, petitioner has applied for leave to file a new habeas corpus petition in No. 01-6487.

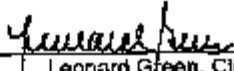
The requests for en banc consideration have not been favored by a majority of the active judges of the court, and the matter is referred to the original panel. Upon consideration of the pleadings noted above, it is the decision of the court that:

- Petitioner's motion for rehearing of Nos. 98-6568/6569 is hereby DENIED
- Petitioner's motion to consolidate No. 01-6504 with Nos. 98-6568/6569 is hereby DENIED
- The mandate of the court in Nos. 98-6568/6569 shall issue forthwith
- The order construing an ostensible Rule 60(b) motion as an application for leave to file a second habeas corpus petition and transferring it to the court of appeals is not an appealable order in No. 01-6504, which is therefore DISMISSED for lack of jurisdiction
- The motions for initial hearing en banc of No. 01-6504 and for rehearing of the court's denial of a certificate of appealability in the matter are hereby DENIED
- The application for leave to file a second habeas corpus petition, as transferred to this court by the district court in No. 01-6487, is DENIED. As we stated in an opinion filed in Nos. 98-6568/6569; 01-6504 on January 18, 2002, "... the decision of this court on appeal from the judgment of the district court did not rest upon any procedural default."

With this order the court's review of Nos. 98-6568/6569, 01-6487, and 01-6504 is hereby concluded.

IT IS SO ORDERED.

ENTERED BY ORDER OF THE COURT

  
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Leonard Green, Clerk