

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 27 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BOBBY DARRELL COLBERT,

Petitioner - Appellant,

v.

JIM McDONALD,

Respondent - Appellee.

No. 24-4917

D.C. No. 2:08-cv-00870-RSL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert S. Lasnik, District Judge, Presiding

Submitted June 18, 2025**

Before: CANBY, S.R. THOMAS, and SUNG, Circuit Judges.

Bobby Darrell Colbert appeals pro se from the district court's order denying his fifth motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(6). We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

Colbert contends that his Rule 60(b) motion asserted a procedural defect in

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

his 28 U.S.C. § 2254 proceedings, and therefore the district court abused its discretion by failing to apply any equitable test in deciding whether extraordinary circumstances warranted relief. The record does not support this assertion.

Colbert's Rule 60 motion sought to reopen his § 2254 proceedings so he could pursue new allegations regarding the prosecution's failure to disclose exculpatory evidence. The motion was, therefore, "in substance a successive habeas petition" subject to the requirements of 28 U.S.C. § 2244(b). *Gonzalez v. Crosby*, 545 U.S. 524, 531 (2005). Because Colbert did not receive authorization from this court to file a second or successive § 2254 petition, the district court was without jurisdiction to entertain Colbert's motion. *See* 28 U.S.C. § 2244(b)(3)(A); *Burton v. Stewart*, 549 U.S. 147, 153 (2007); *see also Holley v. Yarborough*, 568 F.3d 1091, 1098 (9th Cir. 2009) ("[W]e may affirm on any ground supported by the record.").

Colbert's request that this court decline to consider the answering brief is denied, and his motion for judicial notice is denied. All other pending motions are denied as moot.

AFFIRMED.