RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 26a0266p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

IN RE: ABRAHAM A. AUGUSTIN,

Movant. } No. 25-5655

On Application for Leave to File a Second or Successive Petition.

United States District Court for the Eastern District of Tennessee at Chattanooga.
No. 1:19-cv-00328—Travis Randall McDonough, District Judge.

Decided and Filed: September 15, 2026

Before: GILMAN, GRIFFIN, and READLER, Circuit Judges.

LITIGANT | COUNSEL

ON APPLICATION FOR LEAVE TO FILE A SECOND OR SECOND PETITION, MOTION TO REMAND CASE IN CONSTRUING 28 U.SC. § 2255 AS A SECOND OR SUCCESSIVE, and REPLY BRIEF: Abraham A. Augustin, Berlin, New Hampshire, pro se. **ON BRIEF:** Debra A. Breneman, UNITED STATES ATTORNEY'S OFFICE, Knoxville, Tennessee, for the government.

OPINION

GRIFFIN, Circuit Judge.

After a jury convicted Abraham Augustin of six federal offenses, he unsuccessfully moved under 28 U.S.C. § 2255 to vacate his convictions and set aside his sentence. His second § 2255 motion, filed in the wake of *United States v. Davis*, 588 U.S. 445 (2019), was more successful. As a result, the district court vacated his 18 U.S.C. § 924(c) conviction, corrected his sentence accordingly, and issued an amended judgment.

Augustin then moved again to vacate his five other convictions and set aside his sentence under § 2255. But the district court transferred the motion to this court, as § 2255 requires for "second or successive" motions. Augustin asks us to remand, arguing that the motion challenges his amended judgment, not the original judgment, so it is not "second or successive." We agree.

I.

In 2010, a jury found Augustin guilty of discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c), and of five other offenses. The district court sentenced him to 120 months of imprisonment for the § 924(c) conviction, to run consecutive to 380 months of imprisonment for the other convictions. We affirmed. *United States v. Dais*, 559 F. App'x 438 (6th Cir. 2014).

Augustin then filed his first § 2255 motion to vacate his six convictions and set aside his sentence. The district court denied the motion, and we denied a certificate of appealability. *Augustin v. United States*, 2019 WL 11892157 (6th Cir. Feb. 1, 2019) (order). In 2019, however, we granted Augustin leave to file a "second or successive" § 2255 motion challenging his § 924(c) conviction based on *United States v. Davis*, 588 U.S. 445 (2019), which held that § 924(c)(3)(B)'s residual clause is unconstitutionally vague. *In re Augustin*, No. 19-5717, 2019 U.S. App. LEXIS 33946 (6th Cir. Nov. 13, 2019) (order). In 2020, the district court granted this motion, vacated Augustin's § 924(c) conviction, corrected his sentence by reducing it by 120 months, left unaltered the 380 months of imprisonment for the remaining five counts, and issued an amended judgment to reflect the reduced sentence. We affirmed over Augustin's objection that the district court abused its discretion by simply correcting his sentence rather than conducting a full resentencing. *United States v. Augustin*, 16 F.4th 227, 233 (6th Cir. 2021).

In 2023, Augustin filed the instant § 2255 motion, again challenging these five convictions. In 2025, the district court transferred the motion to us after construing it to be "second or successive" under § 2255.

II.

Augustin moves to remand his § 2255 motion to the district court. He argues that, because the order vacating his § 924(c) conviction and sentence created a new judgment, the motion is not "second or successive." He also asks that we reassign the motion to a different district court judge on remand because the district court took over two years to transfer the motion to us.

A.

Generally, a federal defendant has one opportunity, as of right, to collaterally attack his criminal judgment under 28 U.S.C. § 2255. Before a defendant may file a "second or successive" § 2255 motion, he must first receive certification from the appropriate court of appeals that the motion satisfies one of two gatekeeping requirements. 28 U.S.C. § 2255(h) (citing 28 U.S.C. § 2244); *In re Sims*, 111 F.3d 45, 46–47 (6th Cir. 1997) (per curiam). But a motion filed later in time is not necessarily "second or successive." *In re Hill*, 81 F.4th 560, 568 (6th Cir. 2023) (en banc). This is because "second or successive" is a "term of art," not a self-defining, chronological label. *Banister v. Davis*, 590 U.S. 504, 511 (2020) (citation modified).

The Supreme Court has carved out discrete circumstances to determine when a § 2255 motion filed later in time is not "second or successive." *Hill*, 81 F.4th at 568 (collecting cases). As relevant here, when a second motion challenges a new judgment—not the judgment already challenged in a prior § 2255 motion—the motion is not "second or successive." *Id.*[1] And "[t]his judgment-based reasoning naturally applies to all new judgments, whether they capture new sentences or new convictions or merely reinstate one or the other." *King v. Morgan*, 807 F.3d 154, 157 (6th Cir. 2015); *see also In re Stansell*, 828 F.3d 412, 418 (6th Cir. 2016) (holding that partially vacating a sentence creates an intervening judgment and permits that defendant to challenge his undisturbed conviction and term of imprisonment). Accordingly, when a prisoner challenges a new judgment, he does not need to overcome § 2255(h)'s strict limits before filing

[1]Although *Hill* discussed habeas petitions brought by state prisoners under 28 U.S.C. § 2254, its analysis applies equally to § 2255 motions. *See Ajan v. United States*, 731 F.3d 629, 631 (6th Cir. 2013).

his motion. *See Magwood v. Patterson*, 561 U.S. 320, 334 (2010); *see also King*, 807 F.3d at 158.

Equally relevant, if a court grants a defendant's motion collaterally attacking his criminal judgment, § 2255(b) requires the court to first "vacate and set the judgment aside" before, among other things, resentencing or correcting the sentence. Thus, when the district court granted Augustin's § 2255 motion in 2020, it first vacated and set aside the original judgment before correcting Augustin's sentence to reduce it by 120 months and then issuing an amended judgment to reflect this reduction. And when a judgment is vacated, "the law acts as though the vacated [judgment] never occurred." *Hewitt v. United States*, 606 U.S. 419, 431 (2025). What stands in its place is the intervening judgment, which may be challenged as of right under § 2255 without implicating the second or successive bar. *See Magwood*, 561 U.S. at 341–42; *King*, 807 F.3d at 157.

We have concluded the same in several unpublished orders. *See, e.g.*, *In re Johnson*, No. 22-3613, 2023 U.S. App. LEXIS 2267, at *2–3 (6th Cir. Jan. 27, 2023) (order); *In re Daniel*, No. 22-5917, 2023 U.S. App. LEXIS 415, at *2–3 (6th Cir. Jan. 6, 2023) (order); *In re Racey*, No. 22-5029, 2022 U.S. App. LEXIS 9767, at *2–3 (6th Cir. Apr. 12, 2022) (order); *In re Cain*, No. 17-6249, 2018 U.S. App. LEXIS 6936, at *2–3 (6th Cir. Mar. 19, 2018) (order). Although many of those cases involved a full resentencing, we do not see that as a distinguishing feature. Whether the district court corrects the sentence or fully resentences the defendant after vacating the judgment is irrelevant—the previous judgment is void *ab initio*, and the intervening judgment is new and challengeable in the first instance, regardless of the remedial measure selected.[2] *See Hewitt*, 606 U.S. at 431.

In sum, Augustin's motion challenging his amended judgment for the first time is not "second or successive" under § 2255. Thus, we remand the motion to the district court.

[2]We note that not every change to a sentence creates a new judgment. Sentence reductions under 18 U.S.C. § 3582(c) or Criminal Rule 35(b) do not create a new judgment. *Freeman v. Wainwright*, 959 F.3d 226, 229 (6th Cir. 2020) (citation modified). Nor have we found that a *nunc pro tunc* order striking a post-release control condition under state law creates a new judgment. *Id.* at 230.

B.

On remand, Augustin argues that we should return the case to a different district court judge. Under 28 U.S.C. § 2106, we have the authority to do so. But "reassignment is an 'extraordinary power and should be rarely invoked . . . and with the greatest reluctance.'" *Sagan v. United States*, 342 F.3d 493, 501 (6th Cir. 2003) (quoting *Armco, Inc. v. United Steelworkers of Am., AFL–CIO, Local 169,* 280 F.3d 669, 683 (6th Cir. 2002)); *see also Solomon v. United States*, 467 F.3d 928, 935 (6th Cir. 2006).

Although the district court waited two years to transfer Augustin's motion to this court, we do not find the delay in this case sufficient to warrant reassignment because other postconviction litigation was also ongoing before the district court. The district court judge, moreover, has handled the case for over a decade and reassigning the case would no doubt further delay its resolution. Nor do we find any credence in Augustin's allegation that the district court's decision not to conduct a full sentencing after vacating his previous judgment demonstrates bias or improper motive. As we already held, that decision was properly within the district court's discretion. *See Augustin*, 16 F.4th at 233. In sum, reassignment is unwarranted.

III.

The motion to remand is GRANTED for further proceedings consistent with this opinion.