

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted May 19, 2023*

Decided May 22, 2023

Before

DIANE P. WOOD, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2592

BARRY J. SMITH, SR.,
Plaintiff-Appellant,

v.

UNITED STATES CONGRESS and
WISCONSIN LEGISLATURE,
Defendants-Appellees.

Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 19-cv-1001-pp

Pamela Pepper,
Chief Judge.

ORDER

For more than a decade, Barry Smith has sued federal, state, and local governments challenging laws that restrict him from possessing firearms and holding elected office. In its order dismissing this suit against the United States Congress and the Wisconsin Legislature, the district court barred Smith from filing any further suits in

* We have agreed to decide this case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

the Eastern District of Wisconsin based on his status as “a descendant of slaves” or as a convicted felon. We affirmed without disturbing the filing bar, and fined Smith \$2,000. *Smith v. United States Congress*, 840 F. App’x 31, 34 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 398 (2021). More than two years later, Smith filed a motion for relief in the district court under Federal Rule of Civil Procedure 60(b)(4) and (6), arguing that the court lacked authority to impose a filing bar. The court denied the motion because it was untimely and stated no basis for relief. We affirm and again sanction Smith for his abuse of the judicial process.

On appeal, Smith argues that his post-judgment motion was timely. But a Rule 60(b) motion must be made “within a reasonable time,” and we agree with the district court that Smith’s delay of over two and a half years is not reasonable. *See Braun v. Village of Palatine*, 56 F.4th 542, 554 (7th Cir. 2022) (Rule 60(b) motion filed fifteen months after dismissal order “was hardly filed ‘within a reasonable time.’”). Smith points out that he was barred from seeking to modify or rescind the filing restriction for three years, and he filed his motion before the expiration of that period. But we fail to see how that addresses the reasonableness of his delay.

Smith also asserts that the court did not have authority to impose a filing bar because it lacked subject-matter jurisdiction over his claims. But even if the court lacked jurisdiction, it had the authority to sanction Smith. *See, e.g., Matos v. Richard A. Nellis, Inc.*, 101 F.3d 1193, 1196 (7th Cir. 1996) (“[M]isconduct in federal litigation may lead to sanctions even if the court lacked subject-matter jurisdiction.”); *Wojan v. Gen. Motors Corp.*, 851 F.2d 969, 971–73 (7th Cir. 1988) (discussing court’s “inherent prerogative to supervise conduct of parties appearing before” it, including by imposing sanctions, even in absence of subject-matter jurisdiction). Moreover, we already have explained to Smith that the time for challenging the validity of the filing bar was on direct appeal. *See Smith v. Cmty. Care, Inc.*, No. 20-3363, 2022 WL 1436799, at *1 (7th Cir. May 6, 2022), *reh’g and reh’g en banc denied*, (7th Cir. June 3, 2022), *cert. denied*, 143 S. Ct. 374 (2022). Arguments suitable for direct appeal do not invoke “exceptional circumstances” warranting the extraordinary remedy of relief under Rule 60(b). *See Banks v. Chi. Bd. of Educ.*, 750 F.3d 663, 668 (7th Cir. 2014).

Lastly, we turn to Smith’s history of vexatious litigation. The district court imposed the filing bar against Smith due to his abusive litigation practices: Over the years, Smith has filed seven closely related federal actions and appeals that were rejected by district courts and this court as “meritless, frivolous, or even absurd.” *See Smith*, 840 F. App’x at 32 (collecting cases). After he appealed from the district

court's dismissal of his complaint in this case, we fined Smith \$2,000 for his abuse of the judicial process. *Id.* at 34. But Smith has paid that fine and continues filing meritless actions and appeals. This includes an attempt to sue a private company based on claims arising out of his status as a descendant of slaves. *See* Compl. *Smith v. Cmty. Care, Inc.*, No. 20-cv-1482 (E.D. Wis. Sept. 22, 2020). When the court dismissed his suit for violating the filing bar, Smith sought to amend his complaint to replace "Black descendants of American slaves" with "American Negro." The court rejected the attempt to circumvent the filing bar "by replacing the violating phrase but maintaining its spirit." Order denying leave to amend, *Smith*, No. 20-cv-1482 (E.D. Wis. Dec. 1, 2020). We affirmed. *Smith*, 2022 WL 1436799, at *1.

The \$2,000 sanction was clearly insufficient to deter Smith's improper conduct, and so now we fine him \$5,000 for his continued vexatious litigation. *See Reed v. PF of Milwaukee Midtown, LLC*, 16 F.4th 1229, 1232 (7th Cir. 2021) (new filing bar justified with continued frivolous suits). Within fourteen days of this order, Smith must tender a check payable to the clerk of this court for the full amount of the sanction. Further, the clerks of all federal courts in this circuit shall return unfiled any papers submitted either directly or indirectly by or on behalf of Smith unless and until he pays the full sanction that has been imposed against him. *See In re City of Chicago*, 500 F.3d 582, 585–86 (7th Cir. 2007); *Support Sys. Int'l, Inc. v. Mack*, 45 F.3d 185, 186 (7th Cir. 1995). This filing bar excludes criminal cases and applications for writs of habeas corpus. *See Mack*, 45 F.3d at 186–87.

If Smith, despite his best efforts, is unable to pay in full all outstanding sanctions, he is authorized to submit to this court a motion to modify or rescind this order no earlier than two years from the date of this order. *See id.* at 186; *City of Chicago*, 500 F.3d at 585–86. We note that this sanction has no effect on the filing bar imposed by the district court.

AFFIRMED