

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 26, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PHILIP ANDRA GRIGSBY,

Defendant - Appellant.

No. 22-3281
(D.C. No. 6:12-CR-10174-JWB-1)
(D. Kan.)

ORDER AND JUDGMENT*

Before **PHILLIPS, KELLY**, and **McHUGH**, Circuit Judges.

The district court sentenced Philip Andra Grigsby to 260 years' imprisonment after he pleaded guilty to multiple charges, including eight counts of sexual exploitation of a minor. *United States v. Grigsby*, 749 F.3d 908, 909 (10th Cir. 2014). The court also ordered Grigsby to pay restitution to the victim (his then-minor daughter) and her mother, *see United States v. Grigsby*, 665 F. App'x 701, 703 (10th Cir. 2016), and not to contact the victim or her family members,

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

see United States v. Grigsby, 737 F. App'x 375, 376 (10th Cir. 2018).¹ Over the years, Grigsby has filed numerous motions regarding the restitution and no-contact orders. This appeal concerns two pro se motions he filed in 2022: (1) a motion for establishment of a restitution payment schedule, and (2) a motion for review of the no-contact order. Grigsby now appeals from the order denying both motions.

Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

Motion to Establish Restitution Payment Schedule

The district court treated the motion to establish a restitution payment schedule as a motion under Federal Rule of Civil Procedure 60(b). The parties do not contest this characterization, so we assume without deciding that it was correct. We review the denial of a Rule 60(b) motion for abuse of discretion. *See United States v. Grigsby*, 854 F. App'x 249, 255 (10th Cir. 2021) (citing *Zurich N. Am. v. Matrix Serv., Inc.*, 426 F.3d 1281, 1289 (10th Cir. 2005)).

Grigsby complains that the deposits in his inmate account “are vastly different each month, leaving the Bureau of Prisons [(BOP)] the ability to change the amount [he] puts toward restitution each quarter.” Apl't. Opening Br. at 3. He asserts that allowing the BOP to adjust the payment schedule amounts to an impermissible delegation of the district court's authority in violation of 18 U.S.C. § 3664(f).²

¹ The district court issued two non-contact provisions, one as a civil injunction and another as a condition of supervised release. *See Grigsby*, 737 F. App'x at 376-77. We understand the motion on appeal as addressing the civil injunction.

² Grigsby's opening brief also complains that the victim should receive her restitution directly because she is now an adult. We will not consider this issue

We have held that it is improper for a district court to delegate the preparation of a payment schedule to the BOP and the probation office. *See United States v. Overholt*, 307 F.3d 1231, 1255 (10th Cir. 2002). But here, the district court set a restitution payment schedule in the amended judgment. *See R. Vol. 1* at 164 (directing “[p]ayment to begin immediately . . . of not less than 10% of the funds deposited each month into the inmate’s trust fund account . . .”). We agree with the district court that “[t]he fact that the BOP was assigned the ministerial task of applying a specified percentage to the funds deposited monthly into [Grigsby’s] account, and to processing the payments, does not amount to an improper delegation of responsibility for setting a payment schedule.” *Id.* at 348. The district court did not abuse its discretion in denying Grigsby’s restitution motion.

Motion for Review of No-Contact Order

We have held that a motion to modify the no-contact order should be treated as a motion under Fed. R. Civ. P. 60(b)(5). *See Grigsby*, 737 F. App’x at 377; *see also Grigsby*, 854 F. App’x at 253 (applying that ruling as “the law of this case”). Again, we review for abuse of discretion. *See Grigsby*, 854 F. App’x at 255; *Grigsby*, 737 F. App’x at 377.

because he neither raised it in his district-court motion nor argued for plain-error review of it. *See Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1131 (10th Cir. 2011). Moreover, we have held he lacks standing to make this argument. *See United States v. Grigsby*, 858 F. App’x 286, 287 (10th Cir. 2021). Any other arguments Grigsby intended to make in his opening brief are waived for inadequate briefing. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 841 (10th Cir. 2005).

After announcing the no-contact order at sentencing, the district court stated it would revisit that order at an upcoming hearing on restitution. But the district court did not revisit the no-contact order at the restitution hearing. Grigsby argues that the district court's failure to revisit the no-contact order was "plain error" that "makes the no-contact order moot" because "an orally pronounced sentence controls over a judgment and commitment order when the two conflict." Apl't. Opening Br. at 3.³

Grigsby fails to establish that the district court's failure to readdress the no-contact order at the restitution hearing somehow operated to terminate or revoke the court's earlier pronouncement of the no-contact order. The court's written provision memorializing the no-contact order is consistent with its oral pronouncement at the sentencing hearing, making the rules for reconciling inconsistent provisions inapplicable. In short, the district court did not abuse its discretion in denying the motion for review of the no-contact order.

Conclusion

We grant Grigsby's motion to proceed without prepayment of costs and fees and deny his motion to appoint counsel. We affirm the district court's judgment.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge

³ Grigsby makes additional arguments in his reply brief. But we do not consider arguments raised for the first time in a reply brief. *See United States v. Barajas*, 710 F.3d 1102, 1111 (10th Cir. 2013).