

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

February 21, 2012

Before

FRANK H. EASTERBROOK, *Chief Judge*

DIANE P. WOOD, *Circuit Judge*

JOHN DANIEL TINDER, *Circuit Judge*

Nos. 10-2154 & 11-1498

DAVID PHILLIPS,
Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

Appeal from the United
States District Court for the
Northern District of Illinois,
Eastern Division.

No. 07 C 3014
Joan Humphrey Lefkow,
Judge.

Order

Petitioner-appellant filed a petition for rehearing and rehearing en banc on January 17, 2012. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all of the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.

The slip opinion of this court issued on January 3, 2012, is amended as follows: The final sentence of the only full paragraph at page 6 of the slip opinion is deleted.

A new paragraph is added immediately after this paragraph, reading:

Circuit Rule 57 entails four steps: first, the party seeking relief must ask the district court to initiate its procedures; second, the district judge

must agree and indicate to this court that it is inclined to grant the Rule 60 motion; third, the party that filed the Rule 60 motion must ask this court to remand; finally, this court must remand the case for the purpose of modifying the judgment. Only this combination of steps renders the judgment non-final and allows a modification while the appeal is pending. In the absence of such a vacatur, the Rule 60 motion amounts to a new collateral attack, for the reasons we have given above.