

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-14788-F

JOHNNY RAY BENNETT,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

Johnny Ray Bennett, a Florida prisoner serving concurrent 35-year sentences after pleading *nolo contendere* in 2000 to sexual battery with a firearm and armed burglary of a dwelling, moves for a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP") in order to appeal the denial of his *pro se* motion for relief from judgment under Fed. R. Civ. P. 60(b) following the denial of his 28 U.S.C. § 2254 petition.

As background, the district court dismissed Mr. Bennett's § 2254 petition, which he filed in 2012, as untimely. In March 2014, this Court denied Mr. Bennett a COA and IFP status. In October 2017, over four years after the district court's dismissal of his § 2254 petition, Mr. Bennett filed the instant motion for relief from judgment, pursuant to Fed. R. Civ. P. 60(b)(6). The district court denied the motion, noting that: (1) the motion was filed more than four years

APPX.(A):Order #1.

after the entry of the order of dismissal, and, thus, was not filed within a reasonable time; and (2) Mr. Bennett failed to provide support for the relief requested.

A COA is required to appeal “the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court.” 28 U.S.C. § 2253(c)(1)(A). This includes the denial of a Rule 60(b) motion in a habeas proceeding. *Jackson v. Crosby*, 437 F.3d 1290, 1295 (11th Cir. 2006). In order to obtain a COA, a movant must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

No COA is warranted in this appeal because reasonable jurists would not debate the district court’s denial of Mr. Bennett’s motion, which he filed over four years after the dismissal of his § 2254 petition, as untimely. *See* Fed. R. Civ. P. 60(c)(1) (stating that a motion seeking relief under Rule 60(b)(6) must be filed within a reasonable time). Moreover, the substance of the motion focused exclusively on the underlying merits of the claims that he had attempted to raise in his § 2254 claim and failed entirely to explain how or why the district court’s timeliness determination was erroneous or deserving of reconsideration. Therefore, the district court did not abuse its discretion in concluding that his motion was not filed within a reasonable time, and Mr. Bennett’s motion for a COA is DENIED. His motion for IFP status is DENIED AS MOOT.


UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOHNNY BENNETT,

Petitioner,

v.

Case No: 6:12-cv-1716-Orl-31KRS

SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS
and ATTORNEY GENERAL, STATE OF
FLORIDA,

Respondents.

ORDER

This cause is before the Court on Petitioner's Motion for Relief From An Order/Judgment ("Motion for Relief," Doc. 44). The Court entered an Order (Doc. 32) on July 18, 2013, dismissing this case with prejudice, and the corresponding Judgment (Doc. 33) was entered on July 19, 2013. The Eleventh Circuit Court of Appeals denied Petitioner's request for a certificate of appealability on March 27, 2014. (Doc. 41). The Court previously denied this request on October 4, 2017 (Doc. 43).

Petitioner brings the Motion for Relief under Federal Rule of Civil Procedure 60(b)(6). Rule 60(b)(6) is the catchall provision of Rule 60 and authorizes relief for "any other reason justifying relief from the operation of the judgment." Motions under Rule 60(b)(6) must be filed within a reasonable time after the entry of the judgment or order. *See* Fed. R. Civ. P. 60(c)(1). However, relief under Rule 60(b)(6) is an extraordinary

remedy and requires a showing of extraordinary circumstances. *Gonzalez v. Crosby*, 545 U.S. 524, 536 (2005).

Here, the Motion for Relief was filed more than four years after the entry of the order of dismissal, and, thus, was not filed within a reasonable time. Moreover, Petitioner has failed to provide support for the relief requested, and he has failed to show any extraordinary circumstances that would warrant reconsideration of the order of dismissal or would otherwise warrant relief under Rule 60(b)(6). In short, nothing presented by Petitioner in the Motion for Relief supports the contention that the dismissal of the Petition for Writ of Habeas Corpus was erroneous.

Accordingly, it is **ORDERED** that Petitioner's Motion for Relief From An Order/Judgment (Doc. 44) is **DENIED**. Further, because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is denied with regard to the denial of this motion.

DONE and **ORDERED** in Orlando, Florida on October 16, 2017.




GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party
OrlP-2 10/16

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JOHNNY BENNETT,

Petitioner,

v.

Case No: 6:12-cv-1716-Orl-31KRS

SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS
and ATTORNEY GENERAL, STATE OF
FLORIDA,

Respondents.

_____ /

ORDER

This cause is before the Court on Petitioner's Motion for Relief From An Order/Judgment ("Motion for Relief," Doc. 42). The Court entered an Order (Doc. 32) on July 18, 2013, dismissing this case with prejudice, and the corresponding Judgment (Doc. 33) was entered on July 19, 2013. The Eleventh Circuit Court of Appeals denied Petitioner's request for a certificate of appealability on March 27, 2014. (Doc. 41).

Petitioner brings the Motion for Relief under Federal Rule of Civil Procedure 60(b)(6). Rule 60(b)(6) is the catchall provision of Rule 60 and authorizes relief for "any other reason justifying relief from the operation of the judgment." Motions under Rule 60(b)(6) must be filed within a reasonable time after the entry of the judgment or order. *See* Fed. R. Civ. P. 60(c)(1). However, relief under Rule 60(b)(6) is an extraordinary

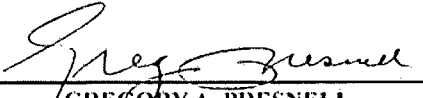
remedy and requires a showing of extraordinary circumstances. *Gonzalez v. Crosby*, 545 U.S. 524, 536 (2005).

Here, the Motion to Relief was filed more than four years after the entry of the order of dismissal, and, thus, was not filed within a reasonable time. Moreover, Petitioner has failed to provide support for the relief requested, and he has failed to show any extraordinary circumstances that would warrant reconsideration of the order of dismissal or would otherwise warrant relief under Rule 60(b)(6). In short, nothing presented by Petitioner in the Motion for Relief persuades the Court that the dismissal of the Petition for Writ of Habeas Corpus was erroneous.

Accordingly, it is **ORDERED** that Petitioner's Motion for Relief From An Order/Judgment (Doc. 42) is **DENIED**. Further, because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is denied with regard to the denial of this motion.

DONE and ORDERED in Orlando, Florida on October 4, 2017.




GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party
OrlP-2 10/4

**Additional material
from this filing is
available in the
Clerk's Office.**