FILED: December 27, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1904
(7:16-cv-00161-NKM-RSB)

COREY LEVON BECKHAM

Petitioner - Appellant

v.

WARDEN

Respondent - Appellee

J U D G M E N T

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1904

COREY LEVON BECKHAM,

Petitioner - Appellant,

v.

WARDEN,

Respondent - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Norman K. Moon, Senior District Judge. (7:16-cv-00161-NKM-RSB)

Submitted: December 21, 2017 Decided: December 27, 2017

Before WILKINSON and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Corey Levon Beckham, Appellant Pro Se. Victoria Lee Johnson, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

PER CURIAM:

Corey Levon Beckham seeks to appeal the district court's orders denying relief on Beckham's 28 U.S.C. § 2254 (2012) petition and denying his Fed. R. Civ. P. 59(e) motion to alter or amend judgment. The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Beckham has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

FILED: February 6, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1904
(7:16-cv-00161-NKM-RSB)

COREY LEVON BECKHAM

Petitioner - Appellant

v.

WARDEN

Respondent - Appellee

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: February 14, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-1904
(7:16-cv-00161-NKM-RSB)

COREY LEVON BECKHAM

Petitioner - Appellant

v.

WARDEN

Respondent - Appellee

MANDATE

The judgment of this court, entered December 27, 2017, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

COREY LEVON BECKHAM, **Petitioner,**	)	**CASE NO. 7:16CV00161**
v.	)	**OPINION AND ORDER**
WARDEN, **Respondent.**	)	**By: Norman K. Moon** **Senior United States District Judge**

On May 4, 2017, I denied the petitioner's Writ of Habeas Corpus and declined to issue a certificate of appealability. *Beckham v. Warden*, No. 7:16CV00161, 2017 WL 1750756 (W.D. Va. May 4, 2017). Petitioner Corey Beckham, a federal inmate proceeding *pro se*, filed a motion for rehearing and reconsideration of the judgment that I have construed pursuant to Federal Rule of Civil Procedure 59. ECF No. 18. For the reasons that follow, the motion will be **DENIED**.

I. Background

Beckham was convicted in 2010. He did not pursue a direct appeal, but he did file a timely habeas petition in the Washington County Circuit Court. The circuit court denied his petition, and the Virginia Supreme Court refused his appeal. On November 5, 2013, Beckham filed a § 2254 petition in the Eastern District of Virginia; the Eastern District transferred the matter to the Western District, where, on February 19, 2014, Judge James Turk dismissed the petition as untimely.

On May 14, 2015,[1] Beckham filed a second state habeas petition in the Virginia Supreme Court, stating that on May 15, 2014, he had learned that defense counsel had been found not guilty by reason of insanity on drug and firearm charges. The court dismissed his habeas petition

[1] In his motion for reconsideration, Beckham shows that he sent his petition on May 14, 2015. In the previous memorandum, I had stated the date of filing as May 18, 2015. Pet'r's Mot. for Recons., ECF No. 18, Attach. 1.

APPENDIX C

as untimely and refused his petition for rehearing. Beckham sought to appeal the Virginia Supreme Court's decision, but the Supreme Court of the United States denied certiorari on January 19, 2016.

Beckham filed a second federal habeas petition on April 4, 2016. I determined that his petition was successive, untimely, procedurally barred, and without merit.

Beckham then filed the present motion for reconsideration. He asserts three claims:

1. His petition was not successive because either (A) the Fourth Circuit erred in referring to his April 2016 habeas petition as his first, thus holding that a certificate of appealability was not required, or (B) I erred in not treating his April 2016 habeas petition as his first petition;
2. Beckham's federal petition was not time-barred because he actually filed his second state habeas petition on May 14, 2015; and
3. The Virginia Supreme Court erred in concluding that his 2015 state habeas petition was untimely under Va. Code § 8.01-654(A).

II. Standard of Review on Motion for Reconsideration

A court may amend or alter a judgment under Rule 59(e) "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Hutchison v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993). "Importantly, however, a Rule 59(e) motion for reconsideration may not be used to 'reargue the facts and law originally argued in the parties' briefs.'" *Projects Mgmt. Co. v. DynCorp Int'l, L.L.C.*, 17 F. Supp. 3d 539, 541 (E.D. Va. 2014) (quoting *United States v. Smithfield Foods*, 969 F. Supp. 975, 977 (E.D. Va. 1997)). This standard is narrowly construed, as a Rule 59(e) motion is "'an extraordinary remedy which should be used

sparingly.'" *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1993) (quoting 11 Wright et al., *Federal Practice and Procedure* § 2810.1, at 124 (2d ed. 1995)); *see Durkin v. Taylor*, 444 F. Supp. 879, 889 (E.D. Va. 1977) ("Whatever may be the purpose of Rule 59(e) it should not be supposed that it is intended to give an unhappy litigant one additional chance to sway the judge.").

III. Discussion

Beckham's contentions are not properly considered on a motion for reconsideration, because they contain nothing that was not, or could not have been, raised on the earlier motion.

Nevertheless, I will briefly discuss the merits.

In Beckham's first claim, the Fourth Circuit's clerical error[2] in confusing his second federal habeas petition (filed in 2016) with his first federal habeas petition (filed in 2013) does not merit reconsideration. In denying Beckham's § 2254 for being successive, I noted that (1) Judge Turk's dismissal of Beckham's prior petition as untimely was a disposition on the merits, (2) his claims did not satisfy any exception, and (3) he did not have proper authorization for a successive petition from the Fourth Circuit. Further, even if the Fourth Circuit did *not* make a clerical error and instead intended for Beckham's numerically second petition to be construed as his first petition, the petition is still time-barred, procedurally defaulted, and without merit.

In Beckham's second claim, Beckham argues that his second state habeas petition was timely because he discovered the "new evidence" on May 15, 2014, and mailed the filing on May 14, 2015. At the threshold, whether Beckham's 2015 state habeas filing was timely is immaterial. Under 28 U.S.C. § 2244(d)(1)(D), a petitioner in custody pursuant to a judgment of a state court has a one-year period of limitation for a writ of habeas corpus from "the date on

[2] It appears the Fourth Circuit Court of Appeals did not realize that Beckham had filed a prior § 2254 in 2013. Order Den. Mot. for Authorization to File a Second or Successive 28 U.S.C. § 2254 Habeas Pet., ECF No. 13.

which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." Beckham states that he discovered the "new evidence" on May 15, 2014 and filed his second state habeas petition 364 days later, on May 14, 2015. Assuming, *arguendo*, that Beckham's 2015 state habeas petition was properly filed under Va. Code § 8.01-654, his state habeas proceedings would have tolled the federal limitation period from May 14, 2015 until January 19, 2016, when the United States Supreme Court refused certiorari. Therefore, the statute of limitations began to run once again on January 20, 2016, and expired on January 21, 2016. Beckham did not file his second § 2254 petition until April 4, 2016. Even under the most generous interpretation, the current petition was untimely.

In Beckham's third claim, he rehashes the argument that the Virginia Supreme Court's dismissal of his second state habeas petition violated the Constitution because he alleged new evidence (counsel's mental illness). Specifically, Beckham alleges that (1) denial of his habeas violated the Suspension Clause, citing *Breard v. Angelone*, 926 F. Supp. 546, 547 (E.D. Va. 1996), and that (2) Va. Code § 8.01-654(B) allows for claims, the facts of which were not known to the petitioner at the time of filing, to be available in subsequent habeas applications.

Firstly, neither the Suspension Clause[3] nor *Breard* entitle Beckham to relief:[4] the district court in *Breard* held:

> [28 U.S.C.] § 2263 infringes on the privilege of habeas corpus in this case because prior to its passage, the petitioner would not have been time barred, yet upon its passage he was *immediately* time barred; the statute provides for no safe harbor or special exception . . . therefore, § 2263 violates the suspension clause and is unconstitutional as applied.

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[3] The Suspension Clause states: "The Privilege of the Writ of *Habeas Corpus* shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. Art. I, § 9, cl. 2.

[4] The Eastern District of Virginia based its holding on *Swain v. Pressley*, 430 U.S. 372 (1977) and *Davis v. Adult Parole Authority*, 610 F.2d 410, 414 (6th Cir. 1979) (emphasis added) ("[A] rule which would permit a court to dismiss an action for habeas corpus *without any consideration* of the equities presented renders the habeas corpus process inadequate . . . and, thereby, constitutes a prohibited suspension of the writ.").

926 F. Supp. at 547. Unlike *Breard*, no intervening law precluded review of Beckham's federal habeas petition. Further, I ultimately offered a disposition on the merits.

Secondly, Beckham has not shown that the Virginia Supreme Court's application of Va. Code § 8.01-654 violated the Constitution or unlawfully prevented his federal habeas petition from receiving a disposition on the merits. In fact, even if the Virginia Supreme Court had not found his second state habeas petition defaulted under § 8.01-654(A), his federal petition still would have been successive, untimely, and meritless.

Lastly, Beckham still has not offered sufficient evidence of: counsel's deficient performance, or that, but for counsel's mental illness, he would not have pleaded guilty and would have instead proceeded to trial.

Thus, Beckham fails to show that there was an intervening law, new evidence not available at trial, or a clear error of law resulting in manifest injustice requiring the extraordinary remedy of 59(e).

Further, a certificate of appealability is required to appeal the denial of a motion to alter or amend a judgment in a habeas case. I deny the petitioner a certificate of appealability, because jurists of reason would not find my resolution of petitioner's motion for reconsideration to be debatable.

Accordingly, I **DENY** the motion alter or amend the judgment, ECF No. 18. I further **DENY** a certificate of appealability.

ENTER: This 3rd day of August, 2017.

NORMAN K. MOON
UNITED STATES DISTRICT JUDGE

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