N.D.N.Y.
14-cv-1275
Kahn, J.

United States Court of Appeals

FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of May, two thousand eighteen.

Present:

Pierre N. Leval,
Gerard E. Lynch,
Christopher F. Droney,
Circuit Judges.

Sam Chinn, AKA Sam Chinn, III,

Petitioner-Appellant,

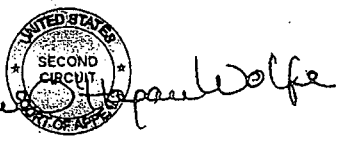
v. 17-4051

D. Artus,

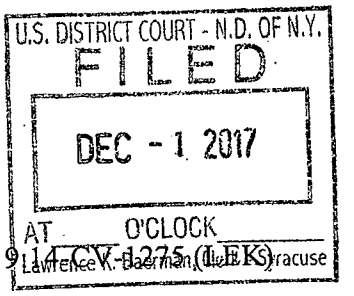
Respondent-Appellee.

Appellant, pro se, moves for a certificate of appealability. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because Appellant has failed to show that "(1) jurists of reason would find it debatable whether the district court abused its discretion in denying the Rule 60(b) motion, and (2) jurists of reason would find it debatable whether the underlying habeas petition, in light of the grounds alleged to support the 60(b) motion, states a valid claim of the denial of a constitutional right." *Kellogg v. Strack*, 269 F.3d 100, 104 (2d Cir. 2001) (per curiam).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK



SAM CHINN,

Petitioner,

-against-

DALE ARTUS,

Respondent.

9:14-CV-1275 (LEK)

DECISION AND ORDER

I. INTRODUCTION

Petitioner Sam Chinn commenced this action by filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, dated October 14, 2014. Dkt. Nos. 1 ("Petition"); 1-1 ("Supplemental Petition"). He challenged his judgment of conviction, following a plea of guilty in Onondaga County Court, to one count of first-degree murder and one count of second-degree murder. Pet. at 1. The Court denied the Petition on June 15, 2016, Dkt. No. 20 ("2016 Order"), and Petitioner appealed on July 7, 2016, Dkt. No. 7 ("Notice of Appeal"). The Second Circuit rejected his appeal on December 22, 2016 because Petitioner had "not 'made a substantial showing of the denial of a constitutional right.'" Dkt. No. 27 ("Mandate") (quoting 28 U.S.C. § 2253(c)). His appeal dismissed, Petitioner now moves for reconsideration of the 2016 Order. Dkt. No. 27 ("Motion"). For the reasons that follow, the Motion is denied.

II. DISCUSSION

Rule 60(b) of the Federal Rules of Civil Procedure allows a party to seek relief from a prior judgment under a limited set of circumstances. Subdivisions (b)(1) and (b)(6), the provisions under which Petitioner appears to bring his Motion, permit relief if the prior decision

was the result of "mistake, inadvertence, surprise, or excusable neglect" or "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(1), (6). A Rule 60(b) motion may be used to attack "the integrity of the previous habeas proceeding," but it may not be used as a vehicle to attack "the underlying criminal conviction." Harris v. United States, 367 F.3d 74, 77 (2d Cir. 2004); see also Gonzalez v. Crosby, 545 U.S. 524, 532 (2005) (noting that a Rule 60(b) motion may be appropriate under § 2254 if the motion "attacks not the substance of the federal court's resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings"); Van Gorder v. Allerd, No. 01-CV-6538, 2008 WL 822018, at *2 (W.D.N.Y. Mar. 26, 2008) ("Rule 60(b) is *not* a vehicle for rearguing the merits of the challenged decision."). Relief pursuant to Rule 60(b)(6) should be granted only in "extraordinary circumstances." Gonzalez, 545 U.S. at 536; Harris, 367 F.3d at 77. A Rule 60(b) motion may not be used to circumvent the Antiterrorism and Effective Death Penalty Act's ("AEDPA") restriction on the filing of second or successive habeas petitions. Gonzalez, 545 U.S. at 531 ("A habeas petitioner's filing that seeks vindication [of a previously denied claim is,] "if not in substance a 'habeas corpus application,' at least similar enough that failing to subject it to the same requirements would be inconsistent with the [AEDPA].").

Petitioner argues that he is entitled to relief under Rule 60(b) because the Honorable Glenn T. Suddaby, Chief Judge of the Northern District, was involved in Petitioner's prosecution when Judge Suddaby was an Assistant District Attorney in Onondaga County. Mot. at 3–8. Petitioner argues that "the integrity of the habeas corpus proceeding was violated" because Judge Suddaby was a "guiding influence of the habeas corpus proceedings" and failed to recuse himself

under 28 U.S.C. § 455. Mot. at 3–5. Petitioner raised the same argument in his Petition when he sought a change of venue. Pet. at 20–29. The Court considered and rejected his argument:

> Although Judge Suddaby is the Chief District Court Judge in the Northern District, he is not presiding over or involved in any manner with Petitioner's habeas proceeding. Petitioner's claim that the Court would be biased against him simply because Judge Suddaby also presides in the Northern District fails to justify a change of venue.

2016 Order at 4. Petitioner claims that the Court's conclusion was error because Judge Suddaby issued an administrative order referring the Petition directly to this Court, rather than the originally assigned Magistrate Judge. Mot. at 4. Despite Petitioner's contention, the issuance of such an administrative order does not suggest Judge Suddaby was a "guiding influence of the habeas corpus proceedings." Id. With respect to Petitioner's § 455 argument, that section does not provide for disqualification of a judge from a case to which he is not assigned, and so it is unclear how Judge Suddaby could have possibly violated § 455 or any other provision.

To the extent that Petitioner's Motion is an attack on the Court's prior resolution of his claims on substantive grounds, or an attack on the validity of his underlying conviction, relief is denied as "as beyond the scope of Rule 60(b)." Harris, 367 F.3d at 82 (quoting Gitten v. United States, 311 F.3d 529, 534 (2d Cir. 2002)). To the extent Petitioner alleges some defect in the proceedings, or that the Court overlooked facts or law that might have changed the outcome, those claims are without merit.

III. CONCLUSION

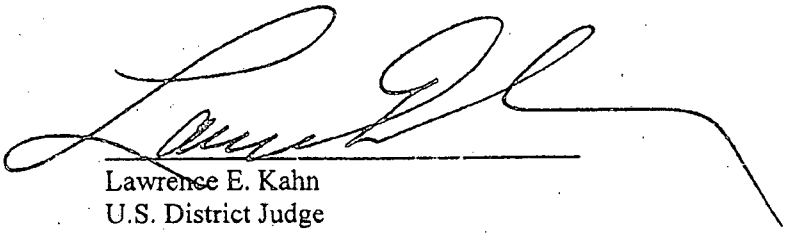
Accordingly, it is hereby:

ORDERED, that Petitioner's Motion (Dkt. No. 27) is **DENIED**; and it is further

ORDERED, that the Clerk of the Court serve a copy of this Decision and Order on all parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: December 1, 2017
Albany, New York



Lawrence E. Kahn
U.S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of July, two thousand eighteen.

Sam Chinn, AKA Sam Chinn, III,

Petitioner - Appellant,

v.

D. Artus,

Respondent - Appellee.

ORDER

Docket No: 17-4051

Appellant, Sam Chinn, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request as a motion for reconsideration, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the motion and petition are denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk