

FILED: May 22, 2018

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 17-7634  
(1:17-cv-00279-CMH-TCB)

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KEITH D. GOODMAN

Petitioner - Appellant

v.

I. D. HAMILTON, Warden, Haynesville Corr. Center

Respondent - Appellee

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O R D E R

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The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Chief Judge Gregory, Judge Thacker, and Judge Harris.

For the Court

/s/ Patricia S. Connor, Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 17-7634

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KEITH D. GOODMAN,

Petitioner - Appellant,

v.

I. D. HAMILTON, Warden, Haynesville Corr. Center,

Respondent - Appellee.

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Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Senior District Judge. (1:17-cv-00279-CMH-TCB)

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Submitted: April 19, 2018

Decided: April 23, 2018

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Before GREGORY, Chief Judge, and THACKER and HARRIS, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Keith D. Goodman, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Keith D. Goodman seeks to appeal the district court's orders dismissing as successive his 28 U.S.C. § 2254 (2012) petition and denying his subsequent 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. 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 Goodman 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*

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA**

**Alexandria Division**

**Keith D. Goodman,  
Petitioner,**

**v.**

**I.D. Hamilton,  
Respondent.**

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**1:17cv279 (CMH/TCB)**

**ORDER**

Petitioner, a Virginia inmate proceeding pro se, filed a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the constitutionality of his convictions of sixteens counts of carnal knowledge of a minor, one count of indecent liberties with a child, one count of using electronic means to procure minors for obscene activities, one count of soliciting a child to perform in sexually explicit visual material, one count of contributing to the delinquency of a minor, and one count of crimes against nature in the Circuit Court of the City of Suffolk. By Order dated October 20, 2017, this matter was dismissed for lack of jurisdiction because title 28 U.S.C. § 2244(b) compels the district court to dismiss a second or successive habeas corpus petition absent an order from a panel of the court of appeals authorizing the district court to review such a petition. Dkt. No. 18.

Petitioner has now filed a Motion for Reconsideration (to Alter or Amend Judgment) seeking relief pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. Dkt. No. 19. Relief under Rule 59(e) is available only “(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.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993).

Petitioner argues that reconsideration is proper to correct a clear error of law or prevent manifest injustice for three reasons.

The first argument petitioner asserts is that this Court was wrong to state that it did not have jurisdiction to consider petitioner's arguments. Specifically, petitioner claims that it was error to not consider his arguments as to why jurisdiction to hear his habeas petition existed. It is axiomatic that a court has jurisdiction to determine whether or not it has jurisdiction. And, in fact, that is what the October 20, 2017 Order reflects. Once it was determined that the instant petition was a second or successive petition, despite petitioner's arguments to the contrary, the Court determined it did not have jurisdiction to consider any arguments as to why a second or successive petition should be heard, as the Court of Appeals must make that determination. Thus, while it may not have been abundantly clear in the October 20, 2017 Order, the Court did consider petitioner's arguments as to whether or not there was jurisdiction over the petition, but found that it did not exist. Accordingly, there was no error of law.

Second, petitioner argues that this Court ignored the "mandates" of Ex Parte Siebold, 100 U.S. 371 (1879) and Montgomery v. Louisiana, 136 S. Ct. 718 (2016), as revised (Jan. 27, 2016), which petitioner claims require this Court to assert jurisdiction over a second or subsequent habeas petition "when the claimant is held under a facially unconstitutional statute." Dkt. No. 19. The Court finds that the cases relied upon by petitioner are inapposite; therefore, there is no basis for petitioner's argument that there is such an exception to § 2244(b). See Magwood v. Patterson, 561 U.S. 320, 330–31 (2010) ("If an application is 'second or successive,' the petitioner must obtain leave from the Court of Appeals before filing it with the district court."). Accordingly, there was no error of law or manifest injustice.

Finally, petitioner argues that there was an error of law because the October 20, 2017 Order does not contain any reasoning for determining that the instant petition was a second or successive petition. The October 20, 2017 Order states, in relevant part, as follows.

Petitioner previously filed a § 2254 habeas corpus petition, regarding the same convictions, in which he challenged the execution of his sentence. See Goodman v. Pearson, Case No. 1:14cv1335 (E.D. Va. December 8, 2015). That petition was dismissed as time barred. Id.

Title 28 U.S.C. § 2244(b) compels the district court to dismiss a second or successive habeas corpus petition absent an order from a panel of the court of appeals authorizing the district court to review such a petition. Even though petitioner's previous petition regarding the convictions at issue challenged the execution of his sentence, "federal habeas petitions of prisoners who are 'in custody pursuant to the judgment of a State court' should be treated as 'applications under section 2254' for purposes of § 2244(b), even if they challenge the execution of a state sentence. Therefore, those petitions are subject to the second-or-successive authorization requirement set forth in § 2244(b)(3)." In re Wright, 826 F.3d 774, 779 (4th Cir. 2016).

Thus, the October 20, 2017 Order reflects the reasoning for finding that the instant petition was a second or subsequent petition and there was no error of law or manifest injustice.<sup>1</sup>

Petitioner has also filed a pleading styled "Rule 11(a) Motion for Reconsideration of COA." Dkt. No. 20. To the extent petitioner is allowed to move for reconsideration of the denial of a certificate of appealability, such motion is denied.

Accordingly, it is hereby

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<sup>1</sup> In addition, "[t]he Supreme Court has held that new claims raised in subsequent habeas petitions were 'abusive' if those claims were available to the petitioner at the time of a prior petition's filing." In re Wright, 826 F.3d 774, 784 (4th Cir. 2016). Because the claims petitioner raises are based on cases that were decided prior to petitioner filing his first habeas petition, the claims were available to him at the time he filed his prior petition.

ORDERED that petitioner's Motion for Reconsideration (to Alter or Amend Judgment) [Dkt. No. 19] and Rule 11(a) Motion for Reconsideration of COA [Dkt. No. 20] be and are DENIED.

To appeal this decision, petitioner must file a written notice of appeal with the Clerk's Office within thirty (30) days of the date of the entry of this Order. A written notice of appeal is a short statement stating a desire to appeal this Order and noting the date of the Order petitioner wants to appeal. Petitioner need not explain the grounds for appeal until so directed by the court. Failure to timely file a notice of appeal waives the right to appeal this decision. Petitioner must also request a certificate of appealability from a circuit justice or judge. See 28 U.S.C. § 2253 and Fed. R. App. P. 22(b). For the reasons stated above, this Court expressly declines to issue such a certificate.

The Clerk is directed to send a copy of this Order to petitioner and counsel of record for respondent.

Entered this 13<sup>th</sup> day of Dec. 2016.

Claude M. Hilton  
United States District Judge

Alexandria, Virginia

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA**

**Alexandria Division**

**Keith D. Goodman,**  
**Petitioner,**

**v.**

**I.D. Hamilton,**  
**Respondent.**

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**1:17cv279 (CMH/TCB)**

**ORDER**

Petitioner, a Virginia inmate proceeding pro se, has filed a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the constitutionality of his convictions of sixteens counts of carnal knowledge of a minor, one count of indecent liberties with a child, one count of using electronic means to procure minors for obscene activities, one count of soliciting a child to perform in sexually explicit visual material, one count of contributing to the delinquency of a minor, and one count of crimes against nature in the Circuit Court of the City of Suffolk.

On June 26, 2017, respondent filed a Motion to Dismiss and Rule 5 Answer, along with a supporting brief and exhibits. Dkt. Nos. 11-12, 14. Petitioner was also provided the notice required by Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975) and Local Rule 7K. Dkt. No. 13. On July 21, 2017, petitioner filed a reply brief. Dkt. No. 16. The motion is now ripe for adjudication. For the reasons that follow, respondent's Motion to Dismiss will be granted, and the petition will be dismissed, with prejudice.

Petitioner previously filed a § 2254 habeas corpus petition, regarding the same convictions, in which he challenged the execution of his sentence. See Goodman v. Pearson, Case No. 1:14cv1335 (E.D. Va. December 8, 2015). That petition was dismissed as time barred. Id.



Title 28 U.S.C. § 2244(b) compels the district court to dismiss a second or successive habeas corpus petition absent an order from a panel of the court of appeals authorizing the district court to review such a petition. Even though petitioner's previous petition regarding the convictions at issue challenged the execution of his sentence, "federal habeas petitions of prisoners who are 'in custody pursuant to the judgment of a State court' should be treated as 'applications under section 2254' for purposes of § 2244(b), even if they challenge the execution of a state sentence. Therefore, those petitions are subject to the second-or-successive authorization requirement set forth in § 2244(b)(3)." *In re Wright*, 826 F.3d 774, 779 (4th Cir. 2016).

Petitioner appears to argue the following against dismissal of the instant petition. First, petitioner argues that the instant petition is not a successive petition because (i) of the miscarriage of justice exception to the timeliness of the petition, (ii) plaintiff exercised due diligence in finding the case law to support his claims, (iii) he was prohibited by prior case law from arguing that Virginia Code § 18.2-361(A) was unconstitutional, (iv) he did not attack his convictions in his previous petition, but rather the execution of his sentence, and (v) the previous petition was dismissed on technical, procedural grounds. Second, petitioner argues that he could not have raised the claims asserted in the instant petition in his previous petition because they only became ripe when he discovered the case law to support his current claims. Finally, petitioner argues that, even if this is a successive petition, it should be considered because he is being held pursuant to a facially unconstitutional statute. Absent authorization from the court of appeals for this court to review petitioner's subsequent petition, this Court does not have jurisdiction to consider petitioner's arguments.

The court of appeals will only authorize such a review if a petitioner can show that (1) the claim has not been previously presented to a federal court on habeas corpus, and (2) the claim relies on a new rule of constitutional law made retroactive to cases on collateral review by the

Supreme Court, or the claim relies on facts which could not have been previously discovered by due diligence and which show “by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.” 28 U.S.C. § 2244(b)(2)(B)(ii). As petitioner has not provided an appropriate order from the United States Court of Appeals for the Fourth Circuit pursuant to § 2244(b)(2)(B), this Court lacks jurisdiction to consider this successive petition.

Accordingly, respondent’s Motion to Dismiss [Dkt. No. 12] is GRANTED and it is hereby ORDERED that this action be and is DISMISSED, WITHOUT PREJUDICE to petitioner’s right to move a panel of the United States Court of Appeals for the Fourth Circuit for an order authorizing this Court to consider the petition.

To appeal this decision, petitioner must file a written notice of appeal with the Clerk’s Office within thirty (30) days of the date of the entry of this Order. A written notice of appeal is a short statement stating a desire to appeal this Order and noting the date of the Order petitioner wants to appeal. Petitioner need not explain the grounds for appeal until so directed by the court. Failure to timely file a notice of appeal waives the right to appeal this decision. Petitioner must also request a certificate of appealability from a circuit justice or judge. See 28 U.S.C. § 2253 and Fed. R. App. P. 22(b). For the reasons stated above, this Court expressly declines to issue such a certificate.

The Clerk is directed to send a copy of this Order and a standard § 2244 form to petitioner, a copy of this Order to counsel of record for respondent, and to close this civil case.

Entered this 20<sup>th</sup> day of Oct. 2017.

Alexandria, Virginia

*Claude M. Hilton*  
VSDT