

APPENDIX

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 18-6595

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BARTON JOSEPH ADAMS,

Defendant - Appellant,

and

JOSEPHINE ARTILLAGA ADAMS; B.A.,

Claimants.

Appeal from the United States District Court for the Northern District of West Virginia,
at Martinsburg. John Preston Bailey, District Judge. (3:08-cr-00077-JPB-RWT-1; 3:15-
cv-00111-JPB-RWT)

Submitted: October 30, 2018

Decided: November 5, 2018

Before MOTZ, DUNCAN, and WYNN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Barton Joseph Adams, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

Appendix A.

PER CURIAM:

Barton Joseph Adams seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (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 motion 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 Adams has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny Adams' motion to appoint counsel, 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 NORTHERN DISTRICT OF WEST VIRGINIA
Martinsburg**

BARTON JOSEPH ADAMS,

Petitioner,

v.

**Criminal Case No. 3:08-CR-77
Civil Case No. 3:15-CV-111
Judge Bailey**

UNITED STATES OF AMERICA,

Respondent.

ORDER RESOLVING MOTIONS AND DISMISSING PETITION

Pending before this Court are the following motions:

1. Motion to Reduce Monthly Restitution Payments [Doc. 1400];
2. Motion to Refund All Social Security Retirement Benefits Taken Under
Penalty of Imprisonment to Pay Restitution [Doc. 1407];
3. Motion to Vacate Under 28 U.S.C. § 2255 [Doc. 1413 / Civ. Doc. 1];
4. Motion for an Evidentiary Hearing for the Section 2255 Petition [Doc. 1478];
5. Motion Concerning Delay in Issuing the Order Requiring the Government to
Answer Petitioner's Section 2255 Petition [Doc. 1485];
6. Motion to Unseal Case Number 3:08-CR-77 [Doc. 1519];
7. Motion to Recuse Judge John Preston Bailey and Magistrate Judge Robert
W. Trumble [Doc. 1550 / Civ. Doc. 13];
8. Motion for Appropriate Relief [Doc. 1552 / Civ. Doc. 17];

9. Motion to File in Case Number 3:15-CV-111 "Defendant Adams's Sworn Brief in Support of 2255 Motion" [Doc. 1554 / Civ. Doc. 19];

10. Motion to Supplement the Motion to Vacate Under 28 U.S.C. § 2255 [Doc. 1557];

11. Request for copies of all CJA billings, vouchers and payment vouchers submitted by any and all CJA attorneys appointed to represent me in case numbers 3:08-CR-77 and 3:11-CR-54 [Doc. 1558];

12. Motion to Appoint Counsel [Doc. 1566]; and

13. Pro-Se Letter to Expedite [1568].

Having reviewed each of the submissions, this Court rules as follows:

1 & 2. Motion to Reduce Monthly Restitution Payments [Doc. 1400] and Motion to Refund All Social Security Retirement Benefits Taken Under Penalty of Imprisonment to Pay Restitution [Doc. 1407]. These Motions seek a reduction in the amounts being taken from the defendant's social security retirements. At the present rate at which restitution payments are being deducted from the social security benefits, the defendant will not even begin to significantly address the restitution award in this case. This Court finds no reason to reduce these payments.

3. Motion to Vacate Under 28 U.S.C. § 2255 [Doc. 1413]. This Motion raises the issue of ineffective assistance of counsel, claiming that counsel "failed to advise Dr. Adams of the 'secretive AD HOC Dual-Docket System used by the district court for this case," and that the pre-trial accounting order was unlawful. With respect to the allegation of a secretive dual docket system, the defendant persisted in filing documents that contained information which violated the E-Government Act of 2002 and Local General

Rule 5.08, which required that those documents be sealed. The sealing of these documents made them unavailable to counsel and the general public. There was and is no dual docket, simply that certain documents had to be sealed due to the actions of the defendant.

With respect to the allegation that his counsel failed to advise him that the repatriation order was unlawful, the defendant cites no legal authority for the proposition that the order was, in fact, unlawful. See **United States v. Susi**, 2007 WL 2757748 (W.D. N.C. Sept. 21, 2007) (Whitney, J). Furthermore, even were this Court to reverse the order of civil contempt, there would be no benefit to the defendant, who has completed the service of his sentence and term of supervised release. A favorable ruling on this issue would not affect the validity of the conviction.

Although not mentioned in the defendant's petition, in later filings he also claims that his various counsel failed to appeal this Court's orders amending the judgment [Docs. 1264 and 1308]. These orders were designed to increase the credit for time served - the orders were in defendant's favor. Given that the Fourth Circuit had already affirmed the computation of defendant's sentence and the order of restitution [Doc. 1295], there was nothing to be gained by such an appeal.

4. Motion for an Evidentiary Hearing for the Section 2255 Petition [Doc. 1478]. Having found no merit in the § 2255 petition, this Motion is moot.

5. Motion Concerning Delay in Issuing the Order Requiring the Government to Answer Petitioner's Section 2255 Petition [Doc. 1485]. Having found no merit in the § 2255 petition, this Motion is moot.

6. Motion to Unseal Case Number 3:08-CR-77 [Doc. 1519]. The reason for the

sealing of various documents in 3:08-CR-77 is explained above. This Court has provided copies of documents to defense counsel where appropriate.

7. Motion to Recuse Judge John Preston Bailey and Magistrate Judge Robert W. Trumble [Doc. 1550]. It is clear that the defendant's allegations of bias stem from his dissatisfaction with the court's rulings. It is well settled that the alleged bias must derive from an extra-judicial source to warrant recusal. *In re Beard*, 811 F.2d 818, 828 (4th Cir. 1987). "A presiding judge is not, however, required to recuse himself simply because of 'unsupported, irrational or highly tenuous speculation.'" *United States v. Cherry*, 330 F.3d 658, 665 (4th Cir. 2003), citing *United States v. DeTemple*, 162 F.3d 279, 287 (4th Cir. 1998).

8. Motion for Appropriate Relief [Doc. 1552]. Having found no merit in the § 2255 petition, this Motion is moot.

9. Motion to File in Case Number 3:15-CV-111 "Defendant Adams's Sworn Brief in Support of 2255 Motion" [Doc. 1554]. The defendant apparently misunderstands the purpose of case number 3:15-CV-111. The civil case is opened only for statistical purposes, with documents to be docketed only in the criminal case 3:8-cr-77. Nevertheless, having found no merit in the § 2255 petition, this Motion is moot.

10. Motion to Supplement the Motion to Vacate Under 28 U.S.C. § 2255 [Doc. 1557]. Having found no merit in the § 2255 petition, this Motion is moot.

11. Request for copies of all CJA billings, vouchers and payment vouchers submitted by any and all CJA attorneys appointed to represent me in case numbers 3:08-CR-77 and 3:11-CR-54 [Doc. 1558]. Having found no merit in the § 2255 petition, this

Motion is moot.

12. Motion to Appoint Counsel [Doc. 1566]. Having found no merit in the § 2255 petition, this Motion is moot.

13. Pro-Se Letter to Expedite [1568]. Having found no merit in the § 2255 petition, this Motion is moot.

For the reasons stated above:

1. Motion to Reduce Monthly Restitution Payments [**Doc. 1400**] is **DENIED**.

2. Motion to Refund All Social Security Retirement Benefits Taken Under Penalty of Imprisonment to Pay Restitution [**Doc. 1407**] is **DENIED**.

3. Motion to Vacate Under 28 U.S.C. § 2255 [**Doc. 1413 / Civ. Doc. 1**] is **DENIED** and **DISMISSED**.

4. Motion for an Evidentiary Hearing for the Section 2255 Petition [**Doc. 1478**] is **DENIED AS MOOT**.

5. Motion Concerning Delay in Issuing the Order Requiring the Government to Answer Petitioner's Section 2255 Petition [**Doc. 1485**] is **DENIED AS MOOT**.

6. Motion to Unseal Case Number 3:08-CR-77 [**Doc. 1519**] is **DENIED AS MOOT**.

7. Motion to Recuse Judge John Preston Bailey and Magistrate Judge Robert W. Trumble [**Doc. 1550 / Civ. Doc. 13**] is **DENIED**.

8. Motion for Appropriate Relief [**Doc. 1552 / Civ. Doc. 17**] is **DENIED AS MOOT**.

9. Motion to File in Case Number 3:15-CV-111 "Defendant Adams's Sworn Brief

in Support of 2255 Motion" [Doc. 1554 / Civ. Doc. 19] is **DENIED AS MOOT**.

10. Motion to Supplement the Motion to Vacate Under 28 U.S.C. § 2255 [Doc. 1557] is **DENIED AS MOOT**.

11. Request for copies of all CJA billings, vouchers and payment vouchers submitted by any and all CJA attorneys appointed to represent me in case numbers 3:08-CR-77 and 3:11-CR-54 [Doc. 1558] is **DENIED AS MOOT**.

12. Motion to Appoint Counsel [Doc. 1566] is **DENIED AS MOOT**.

13. Pro-Se Letter to Expedite [Doc. 1568] is **DENIED AS MOOT**.

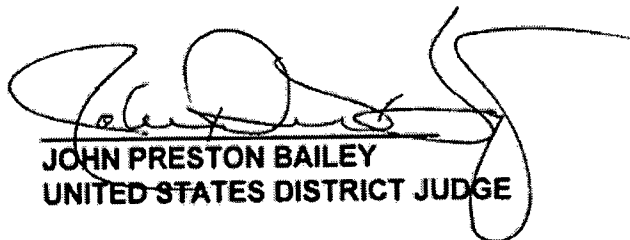
In light of the above, this Court **DIRECTS** the Clerk to enter judgment in favor of the respondent and to **STRIKE** this case from the active docket of this Court.

As a final matter, upon an independent review of the record, this Court hereby **DENIES** a certificate of appealability, finding that Mr. Adams has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: May 10, 2018.


JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE

FILED: January 23, 2019

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FOR THE FOURTH CIRCUIT

No. 18-6595
(3:08-cr-00077-JPB-RWT-1)
(3:15-cv-00111-JPB-RWT)

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BARTON JOSEPH ADAMS

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JOSEPHINE ARTILLAGA ADAMS; B.A.

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O R D E R

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.

The court denies the motion to vacate the district court's order.

The court denies the motion for the district court's lack of jurisdiction.

Entered at the direction of the panel: Judge Motz, Judge Duncan, and Judge

Wynn.

For the Court

/s/ Patricia S. Connor, Clerk