IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12875-A

JOHN J. WILSON, JR.,

Plaintiff-Appellant,

versus

APEX REPORTING GROUP, INC.,
HARVEY RUVIN,
Clerk of Courts,
RODOLFO LLANES,
Chief of Police,

Defendants-Appellees.

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

Before: WILSON, JILL PRYOR and BRANCH, Circuit Judges.

BY THE COURT:

John Wilson, Jr., a *pro se* Florida prisoner, filed, in his closed civil 42 U.S.C. § 1983 case, a motion for the recusal of the magistrate judge involved in the underlying case, under 28 U.S.C. §§ 144 and 455, which the district court denied. Wilson then filed a notice of appeal and a motion to proceed on appeal *in forma pauperis* in the district court. The district court denied *in forma pauperis* status, certifying that the appeal was frivolous and not taken in good faith. However, the district court did not assess the $505.00 appellate filing fee, as required under the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915. Wilson seeks leave to proceed, as construed from his

consent form, and moves for rehearing, leave to amend filing dates in a state court case, appointment of counsel, and for this Court to hold the Miami-Dade Public Defender's Office in contempt.

Wilson has consented to pay the $505.00 filing fee, using the partial payment plan described under § 1915(b). Thus, the only remaining issue is whether the appeal is frivolous. *See* 28 U.S.C. § 1915(e)(2)(B)(i). "[A]n action is frivolous if it is without arguable merit either in law or fact." *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002) (quotation marks omitted).

Recusal is governed by two federal statutes, 28 U.S.C. §§ 144 and 455. Under § 144, a judge must recuse himself when a party to a district court proceeding "files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party." 28 U.S.C. § 144. "To warrant recusal under § 144, the moving party must allege facts that would convince a reasonable person that bias actually exists." *Christo v. Padgett*, 223 F.3d 1324, 1333 (11th Cir. 2000). Under 28 U.S.C. § 455(a), a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994).

Here, at the time when Wilson filed his recusal motion, the underlying § 1983 case was no longer referred to the magistrate judge, as it had already been dismissed. Accordingly, there was no matter pending before the magistrate judge from which he could be recused, and the district court properly denied Wilson's motion. Even assuming that a matter was pending before the magistrate judge, the district court did not abuse its discretion in denying Wilson's motion. Although Wilson filed a motion, and submitted numerous annotated documents, he failed to submit an affidavit supporting his claim of bias. Accordingly, his recusal motion was insufficient under

§ 144. *See* 28 U.S.C. § 144. Likewise, Wilson failed to allege, and a review of the record does not reveal, any facts that would create a significant doubt about the magistrate judge's impartiality, so as to warrant recusal under § 455. Further, to the extent that Wilson claims that the rulings made by the magistrate judge show that he must be recused, judicial rulings alone do not support a recusal motion. *See Liteky*, 510 U.S. at 555.

Accordingly, this Court now finds that the appeal is frivolous, DENIES leave to proceed, and DISMISSES the appeal. Wilson's motions for rehearing, leave to amend, appointment of counsel, and contempt are DENIED AS MOOT.

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BY THE COURT:

John J. Wilson, Jr. has filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's order dated January 7, 2019, denying his motion for leave to proceed *in forma pauperis* on appeal and dismissing the appeal as frivolous, and denying as moot his motions for leave to amend, rehearing, appointment of counsel, and contempt. Because Wilson has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motions, his motion for reconsideration is DENIED.

With his motion for reconsideration, Wilson has filed, for the first time in this Court, a "petition for a writ of habeas corpus," raising numerous claims of constitutional violations related

to his state prosecution. To the extent that Wilson attempts to file a separate petition for a writ of habeas corpus in this Court, his petition is procedurally improper. Although an individual circuit judge possesses the power to entertain an original petition for a writ of habeas corpus, the ordinary procedure contemplated by Fed. R. App. P. 22 requires that an application for a writ of habeas corpus be made to the appropriate district court. *See* 28 U.S.C. § 2241 ("Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions."); Fed. R. App. P. 22 ("An application for a writ of habeas corpus must be made to the appropriate district court."). Accordingly, Wilson's petition for a writ of habeas corpus is DISMISSED WITHOUT PREJUDICE to his re-filing in the district court.