No. 18-1882

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LEROY LYONS,

Plaintiff-Appellant,

v.

THOMAS WINN,

Respondent-Appellee.

ORDER

Leroy Lyons, a Michigan prisoner proceeding pro se, appeals the district court's order denying his "Motion for Reconsideration [and] Request for Appointment of Counsel," "Motion for the Court to Find the Michigan Attorney General [et al.] in Civil and Criminal Contempt ~ ~ Obstructing Justice and Committing a Fraud Upon This Court," and "Motion for an Evidentiary Hearing ~ ~ Actual Innocence ~ Fraud on the Court." He has filed an application for a certificate of appealability ("COA"), a construed motion to remand captioned "Missing Pleading ~ 'Motion for Leave to file Actual Innocence,'" a "Motion to Clerk for Clarification," and a "Motion to Appoint Counsel/Order Files."

Lyons was convicted of two counts of first-degree murder and sentenced to two concurrent terms of life imprisonment without the possibility of parole. The Michigan Court of Appeals affirmed, *People v. Lyons*, No. 222430, 2001 WL 699976 (Mich. Ct. App. Mar. 27, 2001) (per curiam), and the Michigan Supreme Court denied leave to appeal. Lyons also moved unsuccessfully for state post-conviction relief.

In 2010, Lyons filed a 28 U.S.C. § 2254 habeas petition. Pursuant to Rule 5 of the Rules Governing § 2254 Cases, the magistrate judge ordered the State to file "the relevant transcripts,

Appendix A

the relevant appellate briefs . . . , and the state appellate opinions." After the State did so, the district court dismissed the petition in part on the merits and in part for unexcused procedural default. This court denied Lyons a COA. *Lyons v. Lafler*, No. 13-1020 (6th Cir. July 19, 2013) (order).

In 2014, Lyons filed a "Rule 60 Motion subsection (d) Fraud on this Court," *see* Fed. R. Civ. P. 60(d)(3), which the district court denied. Lyons then filed a motion for reconsideration, which the district court also denied. This court denied Lyons a COA and, concluding that his Rule 60(d) motion asserted or reasserted habeas claims, denied his construed motion for authorization to file a second or successive habeas petition. *Lyons v. Lafler*, No. 15-1539 (6th Cir. Feb. 22, 2016) (order).

In 2017, Lyons filed a "Motion to correct or modify the record based on Newly Discovered Evidence," a "Motion to entertain a letter: wrongly convicted," and a "Motion for the State to execute its Constitutional mandated duty to pray for justice from a wrongful conviction." The district court denied Lyons's motions. Lyons did not appeal. He instead filed these motions for reconsideration, a contempt finding, and an evidentiary hearing. In his motions, Lyons cited Rule 60(b)(6) and argued that the State committed fraud on the district court by withholding files, including those of the police and prosecutor, that allegedly include evidence of his actual innocence. The district court denied Lyons's motion for reconsideration under Eastern District of Michigan Local Rule 7.1(h)(3), denied his remaining motions, and later declined to issue a COA.

In his COA application, Lyons asserts his actual innocence, restates his allegation of fraud, and argues that the district court erred in failing to order the State to disclose the withheld files. He also asks this court to appoint counsel, hold his appeal in abeyance, and remand to the district court with instructions to order the State to produce the withheld files.

To obtain a COA, a petitioner must make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). To satisfy that standard here, Lyons must

demonstrate that jurists of reason "could debate whether . . . [his motions] should have been resolved in a different manner." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Rule 60(b)(3) permits a court to relieve a party from a judgment for "fraud . . . by the opposing party." Fed. R. Civ. P. 60(b)(3). Rule 60(d)(3) similarly permits a court to "set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(d)(3). Rule 60(b)(6), which permits a court to grant a motion for "any other reason that justifies relief," Fed. R. Civ. P. 60(b)(6), is also "an appropriate vehicle to bring forward a claim for fraud on the court." *Carter v. Anderson*, 585 F.3d 1007, 1011 (6th Cir. 2009) (citing *Gonzalez v. Crosby*, 545 U.S. 524, 532 n.5 (2005)). This court has

> defined fraud on the court as conduct: 1) on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth; 4) is a positive averment or a concealment *when one is under a duty to disclose*; and 5) deceives the court.

Id. (emphasis added) (citing *Demjanjuk v. Petrovsky*, 10 F.3d 338, 348 (6th Cir. 1993)). A petitioner "has the burden of proving the existence of fraud on the court by clear and convincing evidence." *Id.*

As this court explained in *Carter*, the disclosure obligations of *Brady v. Maryland*, 373 U.S. 83 (1963), do not apply in habeas proceedings. *Carter*, 585 F.3d at 1012-13. Rather, Rule 5 required the State to produce "parts of the transcript that the [the State] consider[ed] relevant," as well as briefs and opinions from the petitioner's state court proceedings. Contrary to Lyons's assertion, the State complied with that rule in this case. And, although the district court could have ordered the production of additional transcripts, authorized discovery, or expanded the record, *see* Rules 5, 6, & 7 of the Rules Governing § 2254 Cases, the district court did not do so in this case. As in *Carter*, then, "[n]o evidence exists that demonstrates that the Warden shirked a duty to turn over . . . information" to the district court. 585 F.3d at 1012.

Reasonable jurists accordingly could not debate the merits of Lyons's motions for reconsideration and a finding of contempt. Because it was plainly apparent from Lyons's motions that he was not entitled to relief, reasonable jurists also could not debate the district

court's denial of his motion for an evidentiary hearing. *See* Rule 4(b) of the Rules Governing § 2254 Cases. The COA application and the pending motions are therefore **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEROY LYONS,

Petitioner,

Case Number: 2:10-CV-11386

v.

HONORABLE VICTORIA A. ROBERTS

BLAINE LAFLER,

Respondent.
_____/

ORDER DENYING PETITIONER'S MOTIONS (Dkt. # 68, # 70, & # 71)

Petitioner Leroy Lyons is a Michigan prisoner serving two life sentences. In 1999, Lyons was convicted of two counts of first-degree murder. In 2010, Lyons filed a habeas corpus petition. This Court denied the petition. (Dkt. # 24). The Sixth Circuit Court of Appeals also denied a certificate of appealability. (Dkt. # 45). Lyons then filed a "Rule 60 Motion subsection (d) Fraud on this Court" (Dkt. #48), which the Court denied (Dkt. 49). The Court also denied Lyons' "Motion for the State to Execute Its Constitutional Mandated Duty to Pray for Justice from a Wrongful Conviction" (Dkt. # 65), and "Motion to Correct or Modify the Record Based on Newly Discovered Evidence" (Dkt. # 66). Now before the Court are Lyons' "Motion for Reconsideration, Request for Appointment of Counsel" (Dkt. # 68), "Motion for the Court to Find the Michigan Attorney General, Bill Schuette, Esq. and Raina Korbakis, Asst. Attorney General in Civil Contempt" (Dkt. 70), and "Motion for Evidentiary Hearing" (Dkt. 71).

Appendix B

The three pending motions concern Lyons' claim that he was wrongfully convicted. First, Lyons seeks reconsideration of the Court's order denying his Motion to Correct or Modify the Record Based on Newly Discovered Evidence. A motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. E.D. Mich. L.R. 7.1(h); *Streater v. Cox,* 336 Fed. App'x 470, 477 (6th Cir. 2009). The movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof. E.D. Mich. L.R. 7.1(h). A "palpable defect" is a "defect which is obvious, clear, unmistakable, manifest or plain." *Olson v. The Home Depot*, 321 F. Supp. 2d 872, 874 (E.D. Mich. 2004). Lyons' motion raises the same issues already ruled upon by the Court, either expressly or by reasonable implication. He has not shown that the Court's decision was based upon a palpable defect. Lyons is not entitled to reconsideration of the Court's order nor is he entitled to appointment of counsel.

Second, Lyons asks the Court to find Attorney General Bill Schuette and Assistant Attorney General Raina Korbakis in contempt of court because they withheld state court files regarding prosecution witness, Mary Jefferson Glenn, which would have shown that she testified pursuant to a deal with the prosecutor. Lyons' challenge to the State's handling of this prosecution witness has been rejected both by this Court and the Sixth Circuit Court of Appeals. *See* Dkt. # 49, #53, #59. The Court finds no basis for a contempt proceeding.

Finally, Lyons seeks an evidentiary hearing to allow him to establish his actual innocence and that the State perpetrated a fraud upon the Court. The habeas petition has been denied. There is no proceeding pending before this Court. In addition, the claims for which Lyons seeks factual support were raised and rejected by this Court and the Court of Appeals. The Court will deny the motion.

The Court DENIES Petitioner's "Motion for Reconsideration, Request for Appointment of Counsel" (Dkt. # 68), "Motion for the Court to Find the Michigan Attorney General, Bill Schuette, Esq. and Raina Korakis, Asst. Attorney General in Civil Contempt" (Dkt. 70); and "Motion for Evidentiary Hearing" (Dkt. # 71).

SO ORDERED.

S/Victoria A. Roberts
VICTORIA A. ROBERTS
UNITED STATES DISTRICT JUDGE

DATE: July 2, 2018

No. 18-1882

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 20, 2019
DEBORAH S. HUNT, Clerk

LEROY LYONS,

Petitioner-Appellant,

v.

THOMAS WINN,

Respondent-Appellee.

ORDER

Before: MOORE, GILMAN, and DONALD, Circuit Judges.

Leroy Lyons, a pro se Michigan prisoner, petitions the court to rehear en banc its order denying him a certificate of appealability. The petition has been referred to this panel, on which the original deciding judge does not sit, for an initial determination on the merits of the petition for rehearing. Upon careful consideration, the panel concludes that the original deciding judge did not misapprehend or overlook any point of law or fact in issuing the order and, accordingly, declines to rehear the matter. Fed. R. App. P. 40(a).

The Clerk shall now refer the matter to all of the active members of the court for further proceedings on the suggestion for en banc rehearing.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix C

No. 18-1882

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 08, 2019
DEBORAH S. HUNT, Clerk

LEROY LYONS,

Petitioner-Appellant,

v.

THOMAS WINN,

Respondent-Appellee.

ORDER

Before: MOORE, GILMAN, and DONALD, Circuit Judges.

Leroy Lyons petitions for rehearing en banc of this court's order entered on January 4, 2019, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix D

Case No. 18-1882

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

LEROY LYONS

Petitioner - Appellant

v.

THOMAS WINN

Respondent - Appellee

This appeal is being held in abeyance and further **REMANDED** to the district court for the sole purpose of determining whether to grant or deny a certificate of appealability with respect to the order entered on July 2, 2018 pursuant to Federal Rules of Appellate Procedure 22(b). If the court is inclined to issue a certificate, it should specify which issues are so certified. See 28 U.S.C.A § 2253(c)(3).

ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT
Deborah S. Hunt, Clerk

Issued: November 07, 2018

Appendix Ep

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEROY LYONS,

Petitioner,

Case Number: 2:10-CV-11386

v.

HONORABLE VICTORIA A. ROBERTS

BLAINE LAFLER,

Respondent.
_____/

ORDER DENYING CERTIFICATE OF APPEALABILITY FROM THE COURT'S JULY 2, 2018 ORDER

The Court denied Michigan prisoner Leroy Lyons' habeas corpus petition in 2012 and denied a certificate of appealability. (Dkt. # 24) The Sixth Circuit Court of Appeals also denied a certificate of appealability. (Dkt. # 45) The matter is now before the Court on remand from the Sixth Circuit Court of Appeals for a determination whether to grant or deny a certificate of appealability with respect to the Court's July 2, 2018 Order. *See* 11/7/2018 Order, *Lyons v. Winn,* No. 18-1882.

On July 2, 2018, the Court denied Petitioner's "Motion for Reconsideration, Request for Appointment of Counsel" (Dkt. # 69), "Motion for the Court to Find the Michigan Attorney General, Bill Schuette, Esq. and Raina Korbakis, Asst. Attorney General in Civil Contempt" (Dkt. # 70), and "Motion for Evidentiary Hearing" (Dkt. # 71). Before Petitioner may appeal the Court's decision denying his motions, a certificate of appealability (COA) must issue. 28 U.S.C. § 2253(c)(1)(B)). A COA may be issued

Appendix F

"only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U .S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). Petitioner must "demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack*, 529 U.S. at 483. "A prisoner seeking a COA must prove something more than the absence of frivolity or the existence of mere good faith on his or her part." *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (internal quotations omitted).

For the reasons set forth in the Court's July 2, 2018 Order, the Court finds that reasonable jurists would not debate the Court's resolution of Petitioner's motions. The Court DENIES Petitioner a certificate of appealability.

SO ORDERED.

S/Victoria A. Roberts
VICTORIA A. ROBERTS
UNITED STATES DISTRICT JUDGE

DATE: November 13, 2018