Appendix A

No. 18-1825

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JESSE LEE CODDINGTON,

Petitioner-Appellant,

v.

MARTIN MAKEL, Warden,

Respondent-Appellee.

ORDER

Jesse Lee Coddington, a pro se Michigan prisoner, appeals the district court's judgment dismissing his motion for relief from judgment under Federal Rule of Civil Procedure 60(b). Coddington has filed an application for a certificate of appealability (COA). *See* Fed. R. App. P. 22(b)(1).

In 1988, a jury convicted Coddington of first-degree murder, second-degree murder, felonious assault, and three counts of possession of a firearm during the commission of a felony. *See People v. Coddington*, 470 N.W.2d 478, 482 (Mich. Ct. App. 1991). Coddington received an aggregate sentence of mandatory life imprisonment without parole. The Michigan Court of Appeals vacated the second-degree murder conviction and remanded for entry of a judgment of conviction of voluntary manslaughter and for resentencing. *See id.* at 491. The Michigan Supreme Court denied Coddington leave to appeal. *People v. Coddington*, 483 N.W.2d 364 (Mich. 1992) (mem.). Coddington was resentenced for voluntary manslaughter; he then appealed this sentence to the Michigan Court of Appeals, which affirmed the sentence. Coddington next filed a motion for relief from judgment under Michigan Court Rule 6.500, which the Michigan trial court denied. Ultimately, the Michigan Court of Appeals and the

Michigan Supreme Court again denied leave to appeal. *People v. Coddington*, 486 N.W.2d 692 (Mich. 1992) (mem.).

In 1995, Coddington filed his first habeas corpus petition, which the district court determined was barred by procedural default. This court affirmed the district court's denial, noting that Michigan Court Rule 6.508(D)(3) did not affect his due process rights as it was not retroactively applied to him. *Coddington v. Makel*, No. 96-2218, 1998 WL 252757, at *3 (6th Cir May 13, 1998). Since then, Coddington has filed numerous petitions and motions seeking relief, all of which were ultimately denied. *See Coddington v. Makel*, No. 00-1224 (6th Cir Apr. 28, 2000) (order); *Coddington v. Makel*, No. 12-1035 (6th Cir Sept. 5, 2012) (order).

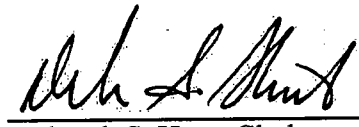
In 2017, Coddington filed a Rule 60(b) motion for relief from judgment in the district court. He sought to resurrect the first habeas petition, arguing that he was entitled to relief under Rule 60(b)(5) and (6) because the district court "did not adjudicate [it] on the merits, it stated it was procedurally barred based upon the Michigan Court's Orders which in turn relied on MCR 6.508(D)." He argued that this court's 1998 decision was incorrect because the decision focused on Michigan Court Rule 6.508(D)(3). Coddington now claims that Michigan Court Rule 6.508(D)(2) applied to his case. The district court denied Coddington's Rule 60(b) motion, noting that it 1) failed to show extraordinary circumstances and 2) was not brought within a reasonable time. Coddington filed a motion for reconsideration, which the district court denied. Coddington raises the same argument on appeal.

We may issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner may meet this standard by showing that "reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). In the context of a Rule 60(b) motion, to obtain a COA Coddington must show that reasonable jurists would debate whether the district court "abused its discretion in declining to reopen the judgment." *Buck v. Davis*, 137 S. Ct. 759, 777 (2017).

Reasonable jurists would not debate the district court's denial of Coddington's Rule 60(b) motion. First, Coddington did not demonstrate that the prior judgment had been "satisfied, released, or discharged; it [was] based on an earlier judgment that has been reversed or vacated; or applying it prospectively [was] no longer equitable." Fed. R. Civ. P. 60(b)(5). Second, "Rule 60(b)(6) only applies in exceptional or extraordinary circumstances where principles of equity mandate relief," *Henness v. Bagley*, 766 F.3d 550, 553-54 (6th Cir. 2014), and Coddington identified no such circumstances. Furthermore, a Rule 60(b)(5) or (6) motion "must be made within a reasonable time." Fed. R. Civ. P. 60(c)(1). We have ruled that a reasonable time "ordinarily depends on the facts of a given case including the length and circumstances of the delay, the prejudice to the opposing party by reason of the delay, and the circumstances compelling equitable relief." *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990); *see Tyler v. Anderson*, 749 F.3d 499, 509 (6th Cir. 2014) (holding that the Rule 60(b)(6) motion was untimely because it was filed ten years after district court's denial of the habeas petition); *Ohio Cas. Ins. v. Pulliam*, No. 96-6522, 1999 WL 455336, at *3 (6th Cir. June 23, 1999) (holding that the Rule 60(b)(6) motion was untimely because it was filed three years after the jury's verdict). Over twenty years had elapsed from the district court's judgment denying Coddington's § 2254 petition until he filed his Rule 60(b) motion challenging the district court's judgment. Reasonable jurists, therefore, would not debate the district court's decision in declining to reopen the judgment.

Accordingly, we **DENY** Coddington's application for a COA.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

Appendix B

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JESSE LEE CODDINGTON,

Petitioner,

v.

MARTIN MAKEL,

Respondent.
_____/

Case No. 1:95-CV-21

HON. GORDON J. QUIST

ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT

Petitioner, Jesse Lee Coddington, a pro se prisoner incarcerated with the Michigan Department of Corrections at Richard A. Hanlon Correctional Facility in Ionia, Michigan, was convicted by a jury in 1988 of first-degree murder, second-degree murder, felonious assault, and three counts of possession of a firearm during the commission of a felony. *People v. Coddington*, 188 Mich. App. 584, 587, 470 N.W.2d 478, 482 (1991). Coddington was sentenced to mandatory life in prison without parole. The Michigan Court of Appeals vacated the second-degree murder conviction and remanded the case for entry of a judgment of conviction of voluntary manslaughter and for resentencing. *Id.* at 606, 470 N.W.2d at 490. The Michigan Supreme Court denied Coddington leave to appeal. *People v. Coddington* , 439 Mich. 970, 483 N.W.2d 364 (1992). The trial court resentenced Coddington for voluntary manslaughter. Coddington appealed this sentence, which the Michigan Court of Appeals affirmed.

Coddington next filed a motion for relief from judgment under Michigan Court Rule 6.500. The Michigan trial court denied his motion. The Michigan Court of Appeals and the Michigan Supreme Court denied leave to appeal.

On January 11, 1995, Coddington filed a habeas petition in this Court, which was denied on June 25, 1996, because the claims were procedurally defaulted in the state courts. On September 4, 1996, this Court denied Coddington's motion for reconsideration. The Sixth Circuit affirmed in an unpublished opinion entered on May 13, 1998, concluding that Michigan Court Rule 6.508(D)(3) did not affect Coddington's due process rights because the rule was not retroactively applied to him. *Coddington v. Makel*, No. 96-2218, 1998 WL 252757, at *3 (6th Cir. May 13, 1998) (per curiam). The United States Supreme Court denied Coddington's petition for writ of certiorari on February 22, 1999, and denied his petition for rehearing on April 19, 1999.

Following denial of Coddington's petition for writ of certiorari, Coddington filed a number of motions seeking relief, all of which were denied. In 1999, Coddington filed a motion to recall this Court's judgment, which the Court denied on January 27, 2000. Coddington filed a motion for reconsideration of the motion to recall the judgment, which the Court denied on April 4, 2000. On May 1, 2000, the Sixth Circuit denied Coddington a certificate of appealability in his appeal of the order denying the motion to recall the judgment. On January 13, 2012, Coddington filed a motion with the Sixth Circuit requesting authorization to file a second or successive habeas petition in this Court. The Sixth Circuit denied the motion on September 5, 2012.

Coddington filed his instant motion for relief under Federal Rule of Civil Procedure 60(b)(5) or (6) on October 30, 2017, arguing that this Court's finding of procedural default in his state criminal case was erroneous. On November 3, 2017, the Court entered an order transferring Coddington's Rule 60(b) motion to the Sixth Circuit, finding that the motion was, in reality, a second or successive habeas petition. (ECF No. 74.) The Sixth Circuit concluded that Coddington's Rule 60(b) motion is not a second successive petition because it seeks to attack only this Court's prior conclusion that his petition was barred by procedural default. Therefore, on April 12, 2018,

the Sixth Circuit entered an order remanding the case to this Court to decide Coddington's Rule 60(b) motion. (ECF No. 76.)

Coddington seeks relief under subsections (5) and (6) of Rule 60(b). The rule provides, in pertinent part, "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: . . . (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief." Fed. R. Civ. P. 60(b)(5), (6).

First, with regard to Rule 60(b)(5), although Coddington cites and quotes the rule and its language, he fails to provide any analysis as to why relief is appropriate under subsection (b)(5). Coddington does not, and cannot, argue that the prior judgment has been satisfied, released, or discharged, or that it is based on an earlier judgment that has been reversed or vacated. His only possible avenue for relief is "applying [the judgment] prospectively is no longer equitable." But this provision still provides no basis for relief. As the Sixth Circuit observed in *Kalamazoo River Study Group v. Rockwell International Corp.*, 355 F.3d 574 (6th Cir. 2004):

> The application of Rule 60(b)(5) here turns on the meaning of "prospective." The mere possibility that a judgment has some future effect does not mean that it is "prospective" because "[v]irtually every court order causes at least some reverberations into the future, and has . . . some prospective effect." *Twelve John Does v. District of Columbia*, 841 F.2d 1133, 1138 (D.C. Cir. 1988). The essential inquiry into the prospective nature of a judgment revolves around "whether it is 'executory' or involves the 'supervision of changing conduct or conditions.'" *Id.* at 1139 (quotation omitted). Injunctions (permanent or temporary), some declaratory judgments, and particularly consent decrees are prospective judgments susceptible to a Rule 60(b)(5) challenge. *See* 12 James Wm. Moore, *Moore's Federal Practice* §§ 60.47[1]–[2]. . . .

Id. at 587. The Court's order denying Coddington's habeas petition was not prospective in application, as defined in *Kalamazoo River Study Group*. It was not executory and was not one of

the types of orders or judgments (injunction, declaratory judgment, or consent decree) normally associated with prospective relief. *See Griffin v. Sec'y, Fla. Dep't of Corrs.*, 787 F.3d 1086, 1089–90 (11th Cir. 2015) ("Because reasonable jurists would not debate whether habeas petitioners may use Rule 60(b)(5) to do what the Supreme Court [in *Agostini v. Felton*, 521 U.S. 203, 117 S. Ct. 1997 (1997)] has forbidden, there is no question that it does not provide a vehicle here for Griffin to relitigate the denial of his § 2254 petition."); *Graves v. Beard*, No. 2:10-cv-00894, 2014 WL 7183404, at *2 (W.D. Pa. Dec. 16, 2014) (concluding that Rule 60(b)(5) afforded no relief because "[t]he judgment at issue . . . is the denial of habeas relief, and that judgment is not prospective within the meaning of rule 60(b)(5)"); *Taylor v. Warden, La. State Penitentiary*, No. 13-cv-0545, 2013 WL 3759823, at *2 (W.D. La. July 15, 2013) (concluding that the judgment entered on the petitioner's habeas petition did not "fall within th[e] description" of judgments with prospective effect covered by Rule 60(b)(5)). Thus, Coddington's reliance on Rule 60(b)(5) is misplaced.

Coddington's motion under Rule 60(b)(6) fails for two reasons: (1) it fails to show extraordinary circumstances; and (2) it was not brought within a reasonable time.

"Rule 60(b)(6) should apply 'only in exceptional or extraordinary circumstances which are not addressed by the first five numbered clauses of the Rule.'" *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990) (citing *Hopper v. Euclid Manor Nursing Home, Inc.*, 867 F.2d 291, 294 (6th Cir. 1989)). The Sixth Circuit has explained:

> Relief under Rule 60(b) is the exception, not the rule, and we are guided by the constraints imposed by a "public policy favoring finality of judgments and termination of litigation." *Waifersong, Ltd. Inc. v. Classic Music Vending*, 976 F.2d 290, 292 (6th Cir. 1992). Particularly strict standards apply to motions made pursuant to Rule 60(b)(6), under which a court may grant relief "only in exceptional or extraordinary circumstances" where principles of equity "mandate" relief. *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 365 (6th Cir. 1990) (quoting *Hopper v. Euclid Manor Nursing Home, Inc.*, 687 F.2d 291, 294 (6th Cir. 1989)).

Franklin v. Jenkins, 839 F.3d 465, 472 (6th Cir. 2016). Moreover, "such circumstances 'rarely

occur' in the habeas context." *Miller v. Mays*, 879 F.3d 691, 698 (6th Cir. 2018) (quoting *Sheppard v. Robinson*, 807 F.3d 815, 820 (6th Cir. 2015)). Here, Coddington fails to demonstrate exceptional circumstances. Instead, he merely presents the same arguments he raised in his prior filings in this Court and before the Sixth Circuit.

In addition, "in order to be timely, a Rule 60(b)(6) motion must be made 'within a reasonable time.'" *Smith v. Sec'y of Health & Human Servs.*, 776 F.2d 1330, 1333 (6th Cir. 1985) (quoting Rule 60(b)(6)). Coddington did not file his motion within a reasonable time. The Court denied Coddington's petition on June 25, 1996, the Sixth Circuit affirmed on May 13, 1998, and the Supreme Court denied Coddington's petition for writ of certiorari on February 22, 1999, and denied his petition for rehearing on April 19, 1999. Coddington waited more than twenty years from the date this Court denied his petition, and more than eighteen years after the Supreme Court denied his petition for rehearing, to file his Rule 60(b)(6) motion. Nothing in Coddington's motion or brief suggests that he could not have filed his motion many years earlier. *See Tyler v. Anderson*, 749 F.3d 499, 510 (6th Cir. 2014) (holding that Rule 60(b)(6) motion filed more than ten years after the district court denied the habeas petitioner's petition was not filed within a reasonable time); *Cobas v. Burgess*, No. 2:00-cv-74647, 2018 WL 1061693, at *3 (E.D. Mich. Feb. 27, 2018) (concluding that Rule 60(b) motions filed over fifteen years after the court denied the petitioner's habeas petition were not filed within a reasonable time and were thus "untimely"); *Hence v. Smith*, No. 97-40461, 2007 WL 2421550, at *3 (E.D. Mich. Aug. 27, 2007) (finding the petitioner's Rule 60(b)(6) motion "filed more than eight years after [the] Court's 1999 order and judgment denying a writ of habeas corpus, was not brought 'within a reasonable time'").

Under 28 U.S.C. § 2253(c)(2), the Court must also determine whether a certificate of appealability should be granted. A certificate should issue if Petitioner has demonstrated a

"substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The Sixth Circuit has disapproved issuance of blanket denials of a certificate of appealability. *Murphy v. Ohio*, 263 F.3d 466, 467 (6th Cir. 2001). Rather, the district court must "engage in a reasoned assessment of each claim" to determine whether a certificate is warranted. *Id.* at 467. Each issue must be considered under the standards set forth by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473, 120 S. Ct. 1595 (2000). *Murphy*, 263 F.3d at 467. Therefore, the Court has considered Coddington's motion under the *Slack* standard.

Under *Slack*, 529 U.S. at 484, 120 S. Ct. at 1604, to warrant a grant of the certificate, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." For the reasons stated above, the Court finds that reasonable jurists could not find that this Court's denial of Coddington's motion was debatable or wrong. Thus, the Court will deny Coddington a certificate of appealability.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion for Relief From Judgment Pursuant to Fed. R. Civ. P. 60(b)(5) and/or (6) (ECF No. 71) is **DENIED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

Dated: May 16, 2018

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JESSE LEE CODDINGTON,

Petitioner,

v.

MARTIN MAKEL,

Respondent.
_____/

Case No. 1:95-cv-21

Honorable Gordon J. Quist

ORDER TRANSFERRING MOTION TO SIXTH CIRCUIT

This is a habeas corpus action filed by a state prisoner under 28 U.S.C. § 2254. Petitioner Jesse Lee Coddington is incarcerated with the Michigan Department of Corrections at Richard A. Handlon Correctional Facility (MTU) in Ionia, Ionia County, Michigan. On January 11, 1995, Petitioner filed a habeas corpus petition in this Court challenging the convictions that resulted in the sentences he is presently serving. The petition was dismissed on June 25, 1996, because the claims were procedurally defaulted in the state courts. Petitioner sought reconsideration, which the Court denied on September 4, 1996. Petitioner appealed the dismissal, and the Sixth Circuit granted a certificate of appealability on one limited ground before affirming this Court's decision on June 26, 1997. The Supreme Court denied certiorari on November 7, 2000.

Petitioner engaged in a wide variety of subsequent attempts to obtain relief. Petitioner filed a motion to recall this Court's judgment in 1999, and this Court denied the motion on January 27, 2000. Petitioner filed a second post-judgment motion for relief from judgment in the state courts in 2010, raising claims of newly discovered evidence, which was denied by the

trial court on August 26, 2010, and by the state appellate courts on June 9, 2011, and December 28, 2011, respectively. On January 6, 2016, Petitioner filed a motion in the Sixth Circuit, seeking consideration of a second or successive habeas petition. The Sixth Circuit denied the motion for certificate of appealability on September 5, 2012.

The matter presently is before the Court on Petitioner's motion for relief from judgment under Federal Rule of Civil Procedure 60(b). (ECF No. 71.) When a Rule 60(b) motion is filed in a habeas case, the Court must determine whether consideration of the motion might have the effect of circumventing the "second or successive" petition filing limitations of 28 U.S.C. § 2244(b). *Gonzalez v. Crosby*, 545 U.S. 524 (2005); *Franklin v. Jenkins*, 839 F.3d 465 (6th Cir. 2016). Of course, before a petition might be second or successive, there must be a "first" petition. The original habeas petition filed in this case was Petitioner's first. This Court entered a final judgment denying the petition in 1996.

Under *Gonzalez*, a Rule 60(b) motion might be a second or successive habeas petition if it presents a "claim," that is, "an asserted federal basis for relief from a state court's judgment of conviction." *Gonzalez*, 545 U.S. at 530. The Supreme Court identified several circumstances where a Rule 60(b) motion presents a claim: where the motion seeks to present a new claim of constitutional error not previously presented; (2) where the motion seeks to present new evidence in support of a claim previously denied; or (3) where the motion contends that a subsequent change in substantive law warrants relief from the previous denial of a claim. *Id.* at 530-532. Similarly, a Rule 60(b) motion "can also be said to bring a 'claim' if it attacks the federal court's previous resolution of a claim on the merits . . . ." *Id.* at 532 (emphasis in original).

This Court denied the petition on the grounds of procedural default. Petitioner's motion asks that the Court reconsider that merits determination on the basis of a subsequent change

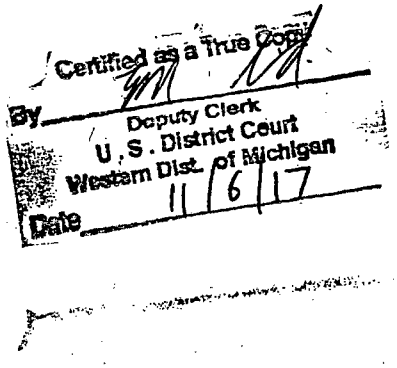
to the law that warrants relief. Under *Gonzalez*, Petitioner's motion presents a claim that this Court may not consider absent an order from the Sixth Circuit Court of Appeals permitting such consideration under 28 U.S.C. § 2244(b). Where a second or successive petition for habeas corpus relief is filed in this Court without authorization by the court of appeals, the matter should be transferred to the Sixth Circuit in the interest of justice pursuant to 28 U.S.C. § 1631. *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

Accordingly,

IT IS ORDERED that Petitioner's motion for relief from judgment (ECF No. 71), construed as a second or successive habeas petition under *Gonzalez*, is transferred to the Sixth Circuit Court of Appeals pursuant to 28 U.S.C. § 1631.

Dated: November 3, 2017

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JESSE LEE CODDINGTON,

Petitioner,

v.

MARTIN MAKEL,

Respondent.
/

Case No. 1:95-CV-21

HON. GORDON J. QUIST

ORDER DENYING MOTION FOR RECONSIDERATION

Petitioner, Jesse Lee Coddington, has filed a motion for reconsideration of the Court's May 16, 2017, Order denying Petitioner's motion for relief from judgment. (ECF No. 77.)

A party seeking reconsideration "bears a heavy burden" under this district's local rule governing such motions. *Goldman v. Healthcare Mgmt. Sys., Inc.*, No. 1:05-CV-35, 2008 WL 2559030, at *1 (W.D. Mich. June 19, 2008) (citing *Wrench LLC v. Taco Bell Corp.*, 36 F. Supp. 2d 787, 789 (W.D. Mich. 1988)). Western District of Michigan Local Rule 7.4(a) provides that "motions for reconsideration which merely present the same issues ruled upon by the Court shall not be granted." Further, reconsideration is appropriate only when the movant "demonstrate[s] a palpable defect by which the Court and the parties have been misled . . . [and] that a different disposition must result from a correction thereof." LCivR 7.4(a). Petitioner has not met this burden.

Petitioner argues that because the Sixth Circuit remanded his motion to this Court on the grounds that the motion should be considered a true Rule 60(b) motion rather than a second or successive habeas petition, this Court should not have concluded that the motion was an improper Rule 60(b) motion. Petitioner's argument mischaracterizes the Sixth Circuit's ruling. The court of

appeals did not pass on the merits of Petitioner's Rule 60(b) motion—it only said that the motion is not a second or successive habeas petition. Thus, the Court was free to consider whether Petitioner's motion was proper on any of the Rule 60(b) grounds Petitioner cited. It wasn't.

Petitioner next argues that the Court failed to cite United States Supreme Court precedent in denying his Rule 60(b) motion. However, the Court was not reviewing Petitioner's habeas claims under the standard set forth in 28 U.S.C. § 2254(d). Rather, the Court was applying Federal Rule of Civil Procedure 60(b). Petitioner fails to cite any authority for the proposition that a federal district court is limited to considering cases from the United States Supreme Court in a applying a rule of civil procedure.

Petitioner's remaining arguments lack merit and warrant no analysis.

Therefore, Petitioner's motion (ECF No. 81) is **DENIED**.

IT IS SO ORDERED.

Dated: June 21, 2018

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE