United States Sixth Circuit Court of Appeals, 06/10/2019 ORDER.

APPENDIX A

No. 19-3090

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: FELIX BROWN,)
)
Petitioner.)

ORDER

Before: GUY, GIBBONS, and NALBANDIAN, Circuit Judges.

Felix Brown, a *pro se* state prisoner, petitions for a writ of mandamus. He asks us to: (1) compel the district court judge to recuse himself based on his "clear acts of pervasive biasness, willful disregard of law, and antagonism"; and (2) vacate the district court's order denying his "hybrid FRCP15 and FRCP 60(d) motion" so that an unbiased judge can decide the matter. Brown requests this relief almost sixteen years after the initial denial of his motion for relief under 28 U.S.C. § 2254. He also moves to proceed *in forma pauperis*.

"Mandamus is a drastic remedy that should be invoked only in extraordinary cases where there is a clear and indisputable right to the relief sought." *United States v. Young*, 424 F.3d 499, 504 (6th Cir. 2005). "Although a writ of mandamus should not generally be used to review the discretionary decisions of trial courts, the writ may be issued where the trial court's actions amount to a clear abuse of discretion." *In re Ford*, 987 F.2d 334, 341 (6th Cir. 1992) (citation omitted). To warrant relief in mandamus, Brown must show his right to the writ is "clear and indisputable." *Id.* (quoting *Kerr v. U.S. Dist. Court for N. Dist. of Cal.*, 426 U.S. 394, 403 (1976)). Brown argues that the district court judge "had a clear duty to recuse: upon a clear showing of his pervasive biasness, antagonism, and manifest disregard of the law," but a review of the record below indicates no "biasness, antagonism, and manifest disregard of the law." A federal judge should

United States District Court, Northern District of Ohio, 12/14/2018 ORDER

APPENIDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
DEC 14 2018
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

GRANTED: ____ DENIED: X
IT IS SO ORDERED.
/s/ Judge Nugent 1/8/19
United States District Judge

FELIX O. BROWN JR. Petitioner, pro se	:	28 U.S.C.S. § 2254 Case No: 1:01 CV 02476
	:	Judge:
CHAE HARRIS, Warden. Respondent.	:	

PETITIONER'S MOTION TO HAVE THE ATTACHED MOTION – MOTION RELIEF FROM JUDGMENT UNDER COMPONENT (1) AND (3) OF FEDERAL RULES OF CIVIL PROCEDURE 60(d); IN CONJUNCTION WITH 15(c)(1)(B) – TO BE HELD IN ABEYANCE

Now comes Petitioner, Felix Brown Jr., proceeding under indigent pro se prisoner status, pursuant to FRAP 7, to respectfully move this Court to hold the attached FRCP 60(d) motion in abeyance for a minimum period of ten (10) days, as required by rule: so as to provide Judge Nugent with the allotted time to rendered a decision on the ***accompanying*** motion(s) to recuse under 28 U.S.C.S. §§ 144, 455(a).

Sincerely submitted,

Felix Brown Jr. #312676
Lebanon Corr. Inst.
3791 State Route 63
P.O. Box 56
Lebanon, Ohio, 45036

United States District Court, Northern District of Ohio, 12/14/2018 ORDER

APPENDIX C

There is no basis in law or fact to warrant Nugent

GRANTED____ DENIED X
IT IS SO ORDERED.
U.S. District Judge
12/18/18

FILED
DEC 14 2018
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Felix O. Brown Jr.	:	28 U.S.C.S. § 2254
Petitioner, pro se	:	Case No. 1:01 CV 02476
	:	
	:	District Court Judge: NUGENT
	:	
Chae Harris, Warden.	:	
Respondent.		

PETITIONER'S MOTION AND AFFIDAVIT REQUESTING THAT JUDGE NUGENT DISQUALIFY HIMSELF

Now comes Petitioner, Felix O. Brown Jr., proceeding under indigent pro se prisoner status, pursuant to 28 U.S.C.S. §§ 144, 455(a) and FRCP 7(a)(1), to respectfully move this Court to recuse itself from entertaining and/or ruling on: (1) the now pending hybrid FRCP 60(d)/FRCP 15(c)(1) motion; and (2) any further matters associated with this case. This court's judicial actions over the past 15 years were clear acts of pervasive biasness. Thereby, the motivation which enabled those acts shall render fair judgment impossible here and in the future.

Judge Nugent's court has knowingly disregarded federal law -- squarely decided by the United States Supreme Court, as well as the Sixth Circuit Court of Appeals – for the sole purpose of preventing a merit determination of a properly presented meritorious constitutional claim. The result of said has been nothing less than the illegal suspension of the Writ: where the denial of Petitioner's right to be heard in a meaningful manner at a meaningful time has been systematically denied.

In 2001, Brown filed a § 2254 petition for a writ of habeas corpus, raising five grounds for relief. Upon the recommendation of a magistrate judge and over Brown's objections, the district court denied Brown's habeas petition and denied a certificate of appealability. This Court also denied a certificate of appealability. After the denial of his habeas petition, Brown filed five motions for relief from the judgment denying habeas relief and a motion to amend one of these post-judgment motions under Rule 60(b). The district court denied all of Brown's motions. This Court denied certificates of appealability for the three motions that Brown appealed.

Brown also filed a motion to reopen his habeas petition so the district court could conduct an evidentiary hearing. The district court denied Brown's motion and his subsequent motion to reopen the time to file an appeal from that denial. This Court denied a certificate of appealability to appeal the denial of the motion to reopen the time to file an appeal. This Court also denied Brown's motions for permission to file second or successive habeas petitions in the district court.

In 2014, Brown filed this post-judgment motion—his sixth—seeking relief under Rule 60(b)(4) from the district court's judgment denying habeas corpus relief in 2003. Brown alleged that the judgment denying habeas corpus relief is void because it did not convey "the true basis" of the denial of the second ground for relief raised in his petition. Brown explained that the district court concluded that his second ground for relief was procedurally defaulted, and he presumed that the district court had rejected "the cause and prejudice rebuttal contained in his traverse [as] legally inadequate." Brown argued that he later realized that his presumption was erroneous and that the district court had concluded that he "never presented a cause and prejudice argument – for the delayed mailing of his Ohio App. R. 26(B) application," even though he had. Brown argued that this Court's 2014 order denying a certificate of appealability to appeal the district court order denying his motion to amend one of his post-judgment motions enlightened him "for the first time of the actual basis of" the district court's procedural default ruling regarding his second ground for relief. Because he did not know the basis for the district court's rejection of his second ground for relief until this Court's 2014 order enlightened him,

Brown argues that he was "deprived of the notice contemplated by the due process clause—especially timely notice—such that he must be recognized as having been denied a meaningful opportunity to litigate his cause and be heard in a meaningful time and manner." The district court denied Brown's motion and subsequently denied a certificate of appealability.

A certificate of appealability is necessary to appeal the denial of a Rule 60(b) motion in a habeas proceeding. *See Johnson v. Bell*, 605 F.3d 333, 336 (6th Cir. 2010). A certificate of appealability may issue only if the petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). When a habeas petition is denied on procedural grounds, the petitioner must show "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Rule 60(b)(4) provides for relief from a final judgment if "the judgment is void." "Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010). A Rule 60(b)(4) motion "must be made within a reasonable time." Fed. R. Civ. P. 60(c)(1).

Brown's Rule 60(b)(4) motion, filed on November 12, 2014, was not filed "within a reasonable time" after the district court's August 5, 2003 judgment, as eleven years elapsed between the two. Brown was no doubt aware that the district court denied the second ground for relief raised in his habeas petition as procedurally defaulted at the time that the judgment was rendered, yet he did not pursue this motion until eleven years later. Brown's motion was clearly untimely. *See Bridgeport Music, Inc. v. Smith*, 714 F.3d 932, 943 (6th Cir. 2013); *United States v. Dailide*, 316 F.3d 611, 618 (6th Cir. 2003). Reasonable jurists would not find it debatable

whether the district court was correct in ruling that Brown was not entitled to relief under Rule 60(b)(4). *See Slack*, 529 U.S. at 484.

Accordingly, the application for a certificate of appealability is denied, and the motion to proceed in forma pauperis is denied as moot.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk