

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

Jul 16, 2019

DEBORAH S. HUNT, Clerk

DAVONTAH LEE NELSON,)
Petitioner-Appellant,)
v.)
SHERRY L. BURT, Warden,)
Respondent-Appellee.)

ORDER

Before: KETHLEDGE, BUSH, and MURPHY, Circuit Judges.

We consider whether this appeal is untimely. *See Alston v. Advanced Brands & Importing Co.*, 494 F.3d 562, 564 (6th Cir. 2007). Generally, in a civil case where neither the United States, a United States agency, nor a United States officer or employee is a party, a notice of appeal must be filed within thirty days after the judgment or order appealed from is entered. 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A).

The district court entered its judgment dismissing Davontah Lee Nelson's habeas corpus petition on May 3, 2019. Any notice of appeal was due to be filed on or before June 3, 2019. The motion for reconsideration, dated June 3, 2019, and filed in the district court on June 7, 2019, was untimely and thus did not toll the appeal period. *See* Fed. R. App. P. 4(a)(4). An untimely post-judgment motion does not toll the appeal period even if the district court rules upon the merits of the motion. *FHC Equities, L.L.C. v. MBL Life Assurance Corp.*, 188 F.3d 678, 682-83 (6th Cir. 1999). The district court denied the motion for reconsideration on June 25, 2019. The June 25, 2019, notice of appeal taken from the May 3, 2019, judgment, is late.

Nelson's failure to timely file a notice of appeal deprives this court of jurisdiction. Compliance with the statutory requirement in § 2107(a) that the notice of appeal be filed within

thirty days after the entry of a judgment is a mandatory jurisdictional prerequisite that this court may neither waive nor extend. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 20 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

It is therefore ordered that this appeal is **DISMISSED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVONTAH LEE NELSON,

Petitioner,

Case Number 17-10564
Honorable David M. Lawson

v.

TONY TRIERWEILER,

Respondent.

ORDER DENYING MOTION FOR CERTIFICATE OF APPEALABILITY

This matter is before the Court on the petitioner's motion for a certificate of appealability.

The Court has reviewed the petitioner's motion and finds that it must be denied because the petitioner has failed to present good grounds for granting the relief requested.

The petitioner filed his petition for a writ of habeas corpus on February 21, 2017. On May 3, 2019, the Court issued an opinion denying the petition after it concluded that the claims raised in the petition were without merit. The Court issued an order denying a certificate of appealability on that same date. On June 25, 2019, the petitioner filed a notice of appeal.

Because the Court previously denied a certificate of appealability, the present motion will be construed as a motion for reconsideration of that ruling. Motions for reconsideration may be granted pursuant to E.D. Mich. LR 7.1(h)(1) when the moving party shows (1) a "palpable defect," (2) that misled the court and the parties, and (3) that correcting the defect will result in a different disposition of the case. E.D. Mich. LR 7.1(h)(3). A "palpable defect" is a defect which is obvious, clear, unmistakable, manifest, or plain. *Mich. Dep't of Treasury v. Michalec*, 181 F. Supp. 2d 731, 734 (E.D. Mich. 2002) (citations omitted). "Generally . . . the court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court." E.D.

Mich. LR 7.1(h)(3). In his present motion, the petitioner merely reiterates the same arguments set forth in his petition, and he has not identified any palpable defect in the Court's conclusion that reasonable jurists could not debate the soundness of the Court's ruling holding that all of the claims raised were without merit.

Accordingly, it is **ORDERED** that the petitioner's motion for a certificate of appealability (ECF No. 15) is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Date: June 25, 2019

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 25, 2019.

s/Susan K. Pinkowski
SUSAN K. PINKOWSKI

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVONTAH LEE NELSON,

Petitioner,

Case Number 17-10564
Honorable David M. Lawson

v.

TONY TRIERWEILER,

Respondent.

ORDER DENYING MOTION FOR RECONSIDERATION

This matter is before the Court on the petitioner's motion for reconsideration of the Court's May 3, 2019 dismissal of his habeas petition on the merits. The Court has reviewed the petitioner's motion and will deny it because the petitioner has failed to identify any palpable defect in the Court's adjudication of the petition, and in his present motion he seeks instead merely to reargue issues already considered and ruled upon by the Court.

Motions for reconsideration may be granted pursuant to E.D. Mich. LR 7.1(h)(1) when the moving party shows (1) a "palpable defect," (2) that misled the court and the parties, and (3) that correcting the defect will result in a different disposition of the case. E.D. Mich. LR 7.1(h)(3). A "palpable defect" is a defect which is obvious, clear, unmistakable, manifest, or plain. *Mich. Dep't of Treasury v. Michalec*, 181 F. Supp. 2d 731, 734 (E.D. Mich. 2002) (citations omitted). "Generally . . . the court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court." E.D. Mich. LR 7.1(h)(3). A motion for reconsideration which presents issues already ruled upon by a district court, either expressly or by reasonable implication, will not be granted. *Hence v. Smith*, 49 F. Supp. 2d 547, 550 (E.D. Mich. 1999); *Czajkowski v. Tindall & Assoc., P.C.*, 967 F. Supp. 951, 952 (E.D. Mich. 1997). The petitioner's

motion states his disagreement with the Court's rulings on several of the claims raised in his petition, but the petitioner has failed to identify any palpable defect in those rulings that would result in a different disposition of the petition.

Accordingly, it is **ORDERED** that the petitioner's motion for reconsideration (ECF No. 12) is **DENIED**.

s/David M. Lawson

DAVID M. LAWSON

United States District Judge

Date: June 25, 2019

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on June 25, 2019.

s/Susan K. Pinkowski

SUSAN K. PINKOWSKI