Exhibit A

FILED: January 24, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6052
(1:18-cv-00601-LMB-MSN)

MORRIS J. WARREN

Petitioner - Appellant

v.

MARK BOLSTER, Acting Warden; J. RAY ORMOND, New Warden; UNITED STATES PAROLE COMMISSION

Respondents - Appellees

O R D E R

Upon consideration of the motion for stay pending appeal, construed as a motion to suspend proceedings, the court suspends appellate proceedings pending a ruling by the district court either denying appellant's Rule 60(b)(6) motion or stating that it would grant the motion if jurisdiction were restored to it for that purpose. A copy of this order shall be transmitted to the clerk of the district court.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6052

MORRIS J. WARREN,

Petitioner - Appellant,

v.

MARK BOLSTER, Acting Warden; J. RAY ORMOND, New Warden; UNITED STATES PAROLE COMMISSION,

Respondents - Appellees.

No. 19-6226

MORRIS J. WARREN,

Petitioner - Appellant,

v.

MARK BOLSTER, Acting Warden; J. RAY ORMOND, New Warden; UNITED STATES PAROLE COMMISSION,

Respondents - Appellees.

Appeals from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:18-cv-00601-LMB-MSN)

Submitted: May 16, 2019 Decided: May 20, 2019

FILED: May 31, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6052 (L)
(1:18-cv-00601-LMB-MSN)

MORRIS J. WARREN

Petitioner - Appellant

v.

MARK BOLSTER, Acting Warden; J. RAY ORMOND, New Warden; UNITED STATES PAROLE COMMISSION

Respondents - Appellees

No. 19-6226
(1:18-cv-00601-LMB-MSN)

MORRIS J. WARREN

Petitioner - Appellant

v.

MARK BOLSTER, Acting Warden; J. RAY ORMOND, New Warden; UNITED STATES PAROLE COMMISSION

Respondents - Appellees

STAY OF MANDATE UNDER
FED. R. APP. P. 41(d)(1)

Under Fed. R. App. P. 41(d)(1), the timely filing of a petition for rehearing or rehearing en banc or the timely filing of a motion to stay the mandate stays the mandate until the court has ruled on the petition for rehearing or rehearing en banc or motion to stay. In accordance with Rule 41(d)(1), the mandate is stayed pending further order of this court.

/s/Patricia S. Connor, Clerk

FILED: July 23, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6052 (L)
(1:18-cv-00601-LMB-MSN)

MORRIS J. WARREN

Petitioner - Appellant

v.

MARK BOLSTER, Acting Warden; J. RAY ORMOND, New Warden; UNITED STATES PAROLE COMMISSION

Respondents - Appellees

No. 19-6226
(1:18-cv-00601-LMB-MSN)

MORRIS J. WARREN

Petitioner - Appellant

v.

MARK BOLSTER, Acting Warden; J. RAY ORMOND, New Warden; UNITED STATES PAROLE COMMISSION

Respondents – Appellees

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Diaz, Judge Thacker, and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: July 31, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6052 (L)
(1:18-cv-00601-LMB-MSN)

MORRIS J. WARREN

Petitioner - Appellant

v.

MARK BOLSTER, Acting Warden; J. RAY ORMOND, New Warden; UNITED STATES PAROLE COMMISSION

Respondents - Appellees

No. 19-6226
(1:18-cv-00601-LMB-MSN)

MORRIS J. WARREN

Petitioner - Appellant

v.

MARK BOLSTER, Acting Warden; J. RAY ORMOND, New Warden; UNITED STATES PAROLE COMMISSION

Respondents - Appellees

MANDATE

The judgment of this court, entered May 20, 2019, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

Before DIAZ and THACKER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Morris J. Warren, Appellant Pro Se. Catherine M. Yang, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In these consolidated cases, Morris J. Warren, a District of Columbia Code Offender incarcerated at FCI Petersburg, seeks to appeal the district court's orders denying relief on Warren's 28 U.S.C. § 2241 (2012) petition and denying his Fed. R. Civ. P. 60(b) motion for relief from judgment. The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Warren has not made the requisite showing. Accordingly, we deny Warren's motion for a certificate of appealability in Appeal No. 19-6052, deny a certificate of appealability in Appeal No. 19-6226, and dismiss these appeals. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

Exhibit B

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Morris J. Warren, **Petitioner,**	)	
v.	)	**1:18cv601 (LMB/MSN)**
United States Parole Commission, et al., Respondents.	)	

ORDER

Michael J. Warren, a federal inmate housed in the Eastern District of Virginia and proceeding pro se, has filed as a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241, challenging his continued incarceration. Petitioner's request to proceed in forma pauperis in the action will be granted.

Accordingly, it is hereby

ORDERED that the petition be and is FILED; and it is further

ORDERED that petitioner's Motion for Leave to Proceed in forma pauperis [Dkt. No. 2] be and is GRANTED; and it is further

ORDERED that, within sixty (60) days of the date of this Order, the respondent show cause why the writ should not be granted. Respondent is to treat this Order as a request that the relevant records of the Federal Bureau of Prisons, if pertinent and available, be forwarded to the Clerk's Office in Alexandria, Virginia. These records will be returned to the proper repository upon conclusion of the federal proceedings; and it is further

ORDERED that, within twenty-one (21) days of the respondent filing any responsive pleading, the petitioner file any reply, including counter-affidavits (sworn statements subject to

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

Morris J. Warren, **Petitioner,**	)	
v.	)	**1:18cv601 (LMB/MSN)** **Appeal No. 19-6052**
United States Parole Commission, et al., Respondents.	)	

ORDER

This matter comes before the Court on petitioner Morris J. Warren's Motion for Reconsideration pursuant to Fed. R. Civ. P. 60(b)(6). [Dkt. No. 26] Warren claimed in this petition brought pursuant to 28 U.S.C. § 2241 that his rights under the Eighth and Fourteenth Amendments were violated when the United States Parole Commission ("USPC") declined to release him on discretionary parole in 2017. By a Memorandum Opinion and Order dated November 8, 2018, respondents' Motion for Summary Judgment was granted, the petition was dismissed, and judgment was entered in favor of the respondents. [Dkt. No. 20-22] In addition, respondents' motion to strike Warren's unauthorized sur-reply was granted because the sur-reply was concerned with a parole decision from 2011 rather than the 2017 decision at issue in this action. Warren noticed an appeal on January 3, 2019, and simultaneously filed the instant Motion for Reconsideration. Respondents have submitted a Memorandum in Opposition to petitioner's Motion. [Dkt. No. 27] On January 24, 2019, the Fourth Circuit Court of Appeals suspended appellate proceedings pending this Court's ruling on the Motion for Reconsideration. For the following reasons, the Motion will be denied.

Relief under Rule 60(b) is available for:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move

> for a new trial under Rule 59(b); (3) fraud . . . , misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P. 60(b). Morris expressly invokes subsection (6) of this rule.

Relief from a final judgment under Rule 60(b) is an extraordinary remedy that is to be awarded only upon a showing of extraordinary circumstances. United States v. Welsh, 879 F.3d 530, 536 (4th Cir. 2018). To warrant such relief, a party "must make a showing of timeliness, a meritorious [claim or] defense, a lack of unfair prejudice to the opposing party, and exceptional circumstances." Werner v. Carbo, 731 F.2d 204, 206-07 (4th Cir. 1984). Specifically as to subsection (6) of the rule, "only truly 'extraordinary circumstances' will permit a party successfully to invoke the 'any other reason' clause of Rule 60(b) when the reason for relief does not fall within the list of enumerated reasons in Rule 60(b)(1)-(5)." Aikens v. Ingram, 652 F.3d 496, 501 (4th Cir. 2011). Relevant here, courts agree that "[w]here the motion is nothing more than a request that the district court change its mind ... it is not authorized by Rule (60)(b)." United States v. Williams, 674 F.2d 310, 313 (4th Cir. 1982).

In the majority of Warren's Motion for Reconsideration, he reasserts arguments he raised previously in the petition and in his opposition to the Motion for Summary Judgment. Specifically, he repeats his challenge to his underlying criminal conviction and sentence, id. at Ground I; reasserts his criticisms of the factors the USPC considered in denying him parole, id. at Ground II; repeats his disagreement with the USPC's decision to depart from the parole guidelines, id. at Ground III; and repeats his argument that the USPC may not consider any factors except those listed in Appendix 2-2 to the parole guidelines, id. at Grounds IV-V. All of

these positions were considered and rejected in the Memorandum Opinion. [Dkt. No. 20 at 4-5, 7-9, nn.2, 6] Accordingly, the Motion for Reconsideration amounts in large part to "nothing more than a request for the district court to change its mind," Williams, 674 F.2d at 313, and states no basis for Rule 60(b) relief.

In Ground VI of his Motion, Warren attempts to introduce an entirely new claim into this action by arguing that the USPC's 2017 denial of parole under the 1987 guidelines violated the *ex post facto* prohibition because his case should have been evaluated under the 1972 guidelines. Mo. at 9-11, 17-18, 21. This contention is not properly before the Court, because Rule 60(b) does not provide a vehicle for a litigant "to raise arguments which could have been raised prior to the issuance of the judgment" or "to argue a case under a novel legal theory that the party had the ability to raise in the first instance." Westport Ins. Corp. v. Albert, 208 F. App'x 222, 227 (4th Cir. 2006).

Even if that were not so, it is readily apparent that the claim Warren seeks to raise is without merit. To succeed on an *ex post facto* challenge to a parole decision, a petitioner must make a particularized showing both that the parole guideline he contends was retroactively applied constituted a "law" within the meaning of the *ex post facto* clause, and that the change in law created a sufficient risk that his punishment would be increased. See Garner v. Jones, 529 U.S. 244, 250 (2000). Warren can satisfy neither of these criteria. Applicable authorities in this circuit hold that the USPC parole guidelines do not constitute "laws" for purposes of an *ex post facto* claim; rather, they amount to a framework for the exercise of the USPC's statutory discretion to grant or deny parole release. See, e.g., Holt v. USPC, 2016 WL 7646366, at *3 (E.D. Va. Nov. 21, 2016); Cunningham v. USPC, 2017 WL 2061381, at *3 (D.S.C. May 12, 2017), aff'd, 717 F. App'x 347 (4th Cir. 2018). In Warren v. Baskerville, 233 F.3d 204, 207 (4th

Cir. 2000), the Fourth Circuit held that the retroactive application of a parole policy change by the Virginia Parole Board did not run afoul of the *ex post facto* prohibition, and in so doing cited with approval an Eleventh Circuit decision which held that the USPC parole guidelines "do not have the force of law." See Dufresne v. Baer,744 F.2d 1543, 1549-50 (11th Cir.1984) (holding that the United States Parole Commission's parole guidelines do not have the force of law, and thus the Commission's retrospective amendment of the guidelines did not violate the Ex Post Facto Clause).

Warren also falls short of making a specific showing that parole consideration under the 1987 rather than the 1972 guidelines created a significant risk of increasing the measure of his punishment. He alleges that the 1987 guidelines reflect a "punitive approach" as compared to the 1972 guidelines, which in his view are more "rehabilitative, Mo. at 7-9, 16, and he concludes that the parole guidelines thus have "create[d] an even more ... significant risk of increasing [his] treatment and punishment to longer periods of incarceration." Mo. at 22. This conclusory assertion fails to make the specific showing necessary to satisfy the dictates of Garner, 529 U.S. at 255, that a "rigorous analysis of the level of risk created by the change in law" is necessary, with a focus "not on whether a legislative change produces some ambiguous sort of 'disadvantage' ... but on whether any such change ... increases the penalty by which a crime is punishable." Warren's discussion fails to meet this heavy burden.[1]

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[1]In fact, the USPC would have had discretion to consider the same factors under the 1972 guidelines as it did under the 1987 guidelines when it denied Warren parole in 2017. Under both, the USPC had discretion to consider mitigating and aggravating factors such as the inmate's offense, prior criminal history, and institutional experience. Holt, 2016 WL 7646366, at *4 (noting that both the 1972 and 1987 guidelines "granted the board wide discretion to deny parole where they believed that the prisoner would re-offend or pose a danger to the community."). Here, the factors for which the USPC departed from the guidelines in denying Warren's parole under the 1987 guidelines - the fact that he was on parole for other crimes when he committed the instant offenses, his commission

Warren concludes his argument concerning his *ex post facto* rights by asserting that they were violated by the USPC's decision to schedule him for his next parole rehearing in 36 rather than 12 months. Mo. at 21-22. This argument is contradicted by applicable authorities, which hold to the contrary that no *ex post facto* violation occurs when the USPC postpones its reconsideration of a prisoner's parole status. See, e.g., Garner, 529 U.S. at 251-56 (postponing reconsideration of parole status for five years). In Warren's case the USPC acknowledged that ordinarily a petitioner's "next hearing should be scheduled within 12 months," but it found a departure from that guideline to be warranted for the same three reasons it decided to deny Warren parole. See Dkt. No. 10-3 at 16; n. 1, supra. Such a determination was a valid exercise of the USPC's discretion under either the 1972 or the 1987 guidelines,[2] and Warren's argument that the postponement of his next consideration for parole amounts to a violation of the *ex post facto* prohibition is without merit.

In Ground VII, Warren contends that the striking of his unauthorized sur-reply amounted to an abuse of the Court's discretion. In reaching that decision, factors that would justify the submission of a sur-reply were considered and found to be absent. [Dkt. No. 20 at 9-10] Moreover, in substance the sur-reply was directed at the an earlier parole decision rather than the

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of a murder in Maryland, and his refusal to participate in sex offender treatment - also could have formed the basis for denying him parole under the 1972 guidelines. Clearly, then, Warren can make no showing that his evaluation under the 1987 rather than the 1972 guidelines created a significant risk that he would incur any increased punishment. See Cunningham, 2017 WL 2061381, at *3 (rejecting an argument by a petitioner denied parole under the 1987 guidelines that he would have been paroled under the 1972 guidelines as "mere speculation" because the USPC could consider his offense history and institutional experience under either).

[2]Warren's belief that the 1972 guidelines mandate parole every 12 months is incorrect. While they state that an inmate"ordinarily" will receive a rehearing in 12 months, the USPC retains discretion to schedule a rehearing on whatever date it deems appropriate. Cunningham, 2017 WL 2061381, at *6.

one at issue in this action and which had been litigated in a different court some years ago. Id. at 10. These facts do not suggest that the decision to strike the sur-reply amounted to an arbitrary or irrational action, and did not amount to an abuse of discretion. Welsh, 879 F.3d at 536. For these reasons, it is

ORDERED that petitioner's Motion for Reconsideration [Dkt. No. 20] be and is DENIED; and it is further

ORDERED that petitioner is to direct any future pleadings to the Clerk of the Fourth Circuit Court of Appeals.

This is a Final Order for purposes of appeal. To appeal, petitioner must file a written notice of appeal with the Clerk within thirty (30) days of the date of this Order. See Fed. R. App. P. 4(a). A written notice of appeal is a short statement stating a desire to appeal this Order and noting the date of the Order petitioner wants to appeal. Petitioner need not explain the grounds for appeal until so directed by the court. Petitioner must also request a certificate of appealability from a circuit justice or judge. See 28 U.S.C. § 2253 and Fed. R. App. P. 22(b). For the reasons previously stated, this Court expressly declines to issue such a certificate.

The Clerk is directed to send a copy of this Order to petitioner, to counsel of record for the respondent, and to the Clerk of the United States Court of Appeals for the Fourth Circuit.

Entered this 29th day of January 2019.

Alexandria, Virginia

/s/
Leonie M. Brinkema
United States District Judge

Additional material from this filing is available in the Clerk's Office.