No. 19-1470

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHARLES BLUNT,

Petitioner-Appellant,

v.

SHERMAN CAMPBELL, Warden,

Respondent-Appellee.

ORDER

Charles Blunt, a Michigan prisoner proceeding pro se, appeals the district court's denial of his Federal Rule of Civil Procedure 60(b) and (d) motion for relief from the district court's judgment denying his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. Blunt filed an application for a certificate of appealability ("COA") in the district court, which this court will consider. *See* Fed. R. App. P. 22(b).

In 2006, a Michigan jury convicted Blunt of two counts of armed robbery and one count each of bank robbery, second-degree fleeing an officer, being a felon in possession of a firearm, carrying a concealed weapon, and possessing a firearm during the commission of a felony. The trial court sentenced him as a fourth habitual offender to a total of forty to eighty years' imprisonment, with a consecutive two-year term for using the firearm during the felony. The Michigan Court of Appeals affirmed Blunt's convictions and sentences on direct appeal. *People v. Blunt*, No. 272632, 2007 WL 2549867 (Mich. Ct. App. Sept. 6, 2007), *perm. app. denied*, 743 N.W.2d 22 (2008).

Blunt timely filed a § 2254 habeas petition, arguing that his convictions for both armed robbery and bank robbery violated the Double Jeopardy Clause and that he was improperly deprived of his Sixth Amendment right to represent himself. The district court denied the habeas

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petition on the merits. *Blunt v. Berghuis*, No. 4:08-CV-14808, 2011 WL 1330754, at *7 (E.D. Mich. Apr. 5, 2011). This court granted Blunt's request for a COA, *Blunt v. Woods*, No. 11-1593 (6th Cir. Dec. 14, 2011) (order), but ultimately affirmed the district court's denial of habeas relief, *Blunt v. Woods*, 505 F. App'x 569, 572-73 (6th Cir. 2012) (per curiam).

Blunt subsequently filed a motion for relief from judgment under Rule 60(b) and (d), arguing that the State committed fraud by arguing to the Michigan Court of Appeals and to the district court that he lied to the trial court when he stated that he had previously represented himself in a criminal trial and secured an acquittal. Blunt acknowledged that he was convicted of the charges against him when he represented himself at a 1989 criminal trial, but he contended that he also represented himself at a 1994 criminal trial, after which he was acquitted. The district court denied the motion. *Blunt v. Berghuis*, No. 08-CV-14808, 2013 WL 5651418, at *1-2 (E.D. Mich. Oct. 15, 2013). Blunt thereafter filed a motion for reconsideration, arguing that he now had clear and convincing evidence that he represented himself during the 1994 trial. The district court denied the motion, *Blunt v. Berghuis*, No. 08-CV-14808, 2014 WL 2572805, at *2 (E.D. Mich. June 9, 2014), and this court denied Blunt's request for a COA, *Blunt v. Berghuis*, No. 14-1819, slip op. at 3 (6th Cir. Oct. 27, 2014) (order).

In September 2015, Blunt filed two motions under Rule 60(b)(2) and (6) and Rule 60(d)(3). He reiterated his allegations that he represented himself during the 1994 trial, that he was found not guilty following that trial, and that the Michigan Attorney General committed a fraud upon the court when it stated that this was not true. In support of his claim, he submitted a letter from attorney Judith S. Gracey, which stated that Blunt represented himself during the 1994 criminal trial and that she had merely been appointed as standby counsel. He also submitted a docket sheet showing that he had been acquitted in the 1994 case. The district court denied the motions and, this court declined to issue a COA. *Blunt v. Berghuis*, No. 16-2326 (6th Cir. Apr. 6, 2017) (order).

In September 2017, Blunt filed another Rule 60 motion for relief from judgment—this time under subsections (b)(6), (d)(2), and (d)(3)—arguing that the Michigan Attorney General committed fraud upon this court by allegedly stating incorrectly that he did not successfully

represent himself in a 1994 state criminal trial. In support of his claim, Blunt submitted a portion of the brief that the Michigan Attorney General's Office filed in his appeal from the district court's denial of his habeas petition. In that brief, the Michigan Attorney General stated that Blunt's "statement to the trial court that he was acquitted when he represented himself previously . . . was false, as he was actually convicted but the Michigan Court of Appeals reversed because the trial court erroneously allowed Blunt to represent himself." The district court denied Blunt's motion, reasoning that it could not reverse a decision by the court of appeals. This court had decisively rejected this exact claim in its April 6, 2017, order denying Blunt a COA. This appeal followed, and Blunt reasserts his claim in his COA application.

"[T]his court will not entertain an appeal from the denial of a Rule 60(b) motion in [a § 2254] proceeding unless the petitioner first obtains a COA." *Johnson v. Bell*, 605 F.3d 333, 339 (6th Cir. 2010). A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). In the context of a Rule 60 motion, "the COA question is . . . whether a reasonable jurist could conclude that 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 conclusion that it lacked the authority to reverse an order of this court. In any event, no reasonable jurist could conclude that the district court abused its discretion in denying Blunt's motion for relief from judgment. Rule 60(b) provides that "the court may relieve a party . . . from a final judgment, order, or proceeding for" several specific reasons, including, in subsection (3), "fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party." Fed. R. Civ. P. 60(b)(3). Blunt alleged that the Michigan Attorney General and other state officials committed fraud in his case. But a Rule 60(b)(3) motion "must be made . . . no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1). Thus, Blunt cannot obtain relief under Rule 60(b)(3) because his motion—which was filed over six years after this court affirmed the district court's denial of his habeas petition—would be untimely.

Rule 60(b) also provides a catch-all provision, permitting courts to grant a motion for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). But the catch-all provision and the other subsections of Rule 60(b) are "mutually exclusive, with relief available under subsection (b)(6) only in the event that none of the grounds set forth in clauses (b)(1) through (b)(5) are applicable." *McCurry ex rel. Turner v. Adventist Health Sys./Sunbelt, Inc.*, 298 F.3d 586, 596 (6th Cir. 2002). Because Blunt's claim that the district court's judgment denying his habeas petition was procured by fraud is plainly covered by Rule 60(b)(3), relief is not available under Rule 60(b)(6).

Rule 60(d)(3) provides that, "[t]his rule does not limit a court's power to . . . set aside a judgment for fraud on the court." To the extent that this rule is an independent source of potential relief, *see Mitchell v. Rees*, 651 F.3d 593, 595 (6th Cir. 2011), the elements of a Rule 60(d)(3) action for fraud are:

> (1) a judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; and (5) the absence of any adequate remedy at law.

Id. (quoting *Barrett v. Sec'y of Health & Human Servs.*, 840 F.2d 1259, 1263 (6th Cir. 1987) (per curiam)). And the "action is 'available only to prevent a grave miscarriage of justice,'" which in the habeas context requires a "strong showing of actual innocence." *Id.* at 595, 596 (quoting *United States v. Beggerly*, 524 U.S. 38, 47 (1998)). Blunt did not make a substantial showing that he is actually innocent of his crimes.

Finally, Rule 60(d)(2)—which permits courts to "grant relief under 28 U.S.C. § 1655 [which deals with liens on property] to a *defendant* who was not personally notified of the action"—is inapplicable to this case. *Thomas v. Bridgeview Bank Grp.*, 716 F. App'x 537, 538 (7th Cir. 2018) (alterations in original) (quoting Fed. R. Civ. P. 60(d)(2)).

Accordingly, Blunt's COA application is **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES BLUNT,

Petitioner,

Case Number: 08-14808
Honorable Mark A. Goldsmith

v.

MARY BERGHUIS,

Respondent.
_____/

ORDER DENYING PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO RULE 60(B) AND 60(D)(2)(3), 60(B)(6) (Dkt. 47)

Petitioner Charles Blunt has filed another motion for relief from judgment challenging the disposition of his self-representation claim. This time, he challenges the Sixth Circuit Court of Appeals' April 6, 2017 Order denying his application for a certificate of appealability. Blunt v. Berghuis, No. 16-2326 (6th Cir. Apr. 6, 2017) (ECF No. 47). The Court denies the motion.

In his habeas petition, Petitioner claimed that he was denied his Sixth Amendment right to self-representation in his state court criminal trial. The Court denied Petitioner's pro se petition on April 5, 2011. See 4/5/2011 Order (Dkt. 13). The United States Court of Appeals for the Sixth Circuit affirmed the Court's decision. Blunt v. Woods, 505 F. App'x 569 (6th Cir. 2012).

Petitioner then filed a motion for relief from judgment arguing that the state committed fraud by stating to the Michigan Court of Appeals and this Court that he did not previously secure an acquittal when representing himself in a criminal trial. (Dkt. 26). The Court denied the motion, see 10/15/2013 Order (Dkt. 27), and denied Petitioner's motion for reconsideration, see 11/18/2013 Order (Dkt. 30). The Sixth Circuit denied Petitioner's application for a certificate of

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appealability from the Court's denial of his motion for relief from judgment. Blunt v. Berghuis, No. 14-1819 (6th Cir. Oct. 27, 2014).

Petitioner then filed two motions under Rules 60(b) and 60(d), again arguing that the Michigan Attorney General committed a fraud upon the Court by stating that Petitioner did not successfully represent himself in a 1994 state criminal trial. See Pet. Mots. (Dkt. 39, 40). The Court denied the motions. See 8/26/2016 Order (Dkt. 41). Petitioner filed two applications for a certificate of appealability in the Court of Appeals. He argued that the state prosecutor and attorney general knew and should have investigated his claim that he had successfully represented himself during the 1994 trial. The Court of Appeals held that, even assuming that Petitioner successfully represented himself in the 1994 trial, he failed to show that the Michigan Attorney General or state prosecutor committed fraud. Blunt v. Berghuis, No. 16-2326 at 3-4 (6th Cir. April 6, 2017).

In the present motion, Petitioner yet again argues that the state prosecutor and Michigan Attorney General committed a fraud upon the Court by denying that he represented himself in 1994. The Sixth Circuit Court of Appeals denied this claim, finding no fraud by the Michigan Attorney General or state prosecutor. Id. This Court may not reverse the decision of the Court of Appeals. United States v. Todd, 920 F.2d 399, 403, n.1 (6th Cir. 1990) ("[W]hen a superior court determines the law of the case, an inferior court lacks the power to depart from it.").

Accordingly, the Court denies Petitioner's Motion for Relief from Judgment Pursuant to Rule 60(b) and 60(d)(2)(3), 60(b)(6) (Dkt. 47).

Dated: April 9, 2019
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on April 9, 2019.

s/Erica Karhoff for Karri Sandusky
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES BLUNT,

Petitioner,

v.

MARY BERGHUIS,

Respondent.

CASE NUMBER 08-CV-14808

HON. MARK A. GOLDSMITH

OPINION AND ORDER
DENYING PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT (DKT. 26)

Petitioner Charles Blunt filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his convictions for bank robbery, two counts of armed robbery, felon-in-possession of a firearm, carrying a concealed weapon, second-degree fleeing a police officer, and possession of a firearm during the commission of a felony. Pet. (Dkt. 1). The Court denied the petition on April 5, 2011. 4/5/2011 Order (Dkt. 13). The United States Court of Appeals for the Sixth Circuit affirmed the Court's decision on November 20, 2012. Blunt v. Woods, 505 F. App'x 569 (6th Cir. 2012). This matter is now before the Court on Petitioner's motion for relief from judgment (Dkt. 26).

Petitioner seeks relief under Federal Rules of Civil Procedure 60(d)(3) and 60(b)(6).[1] Federal Rule of Civil Procedure 60(d)(3) provides that a judgment may be attacked for fraud on

[1] Petitioner's motion is entitled "Motion for Relief from Judgment Pursuant to Rule 60(B) & 60(d)(2)(3)". Although the motion refers to Rule 60(d)(2) in its title, Petitioner does not reference Rule 60(d)(2) elsewhere in the motion and fails to develop any argument. Therefore, the Court denies Petitioner's motion with respect to Rule 60(b)(2). See Rivet v. State Farm Mut. Auto. Ins. Co., 316 F. App'x 440, 449 (6th Cir. 2009) (refusing to address "arguments that . . . are unsupported or undeveloped.").

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the court. Typically, motions for relief from judgment based upon an allegation of fraud are subject to a one-year limitations period. Fed. R. Civ. P. 60(b)(3), (c). However, where a party alleges that a fraud was committed against the court, no limitations period exists. Fed. R. Civ. P. 60(d)(3) ("This rule does not limit a court's power to . . . set aside a judgment for fraud on the court."). "Fraud on the court consists of 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 of the truth; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) deceives the court." Johnson v. Bell, 605 F.3d 333, 339 (6th Cir. 2010) (quotation marks and citations omitted). Petitioner bears the burden of proving existence of fraud upon the court by clear and convincing evidence. Id.

Petitioner also claims that a fraud upon the Court warrants relief under Rule 60(b)(6). Rule 60(b)(6) relief is available only in "unusual and extreme situations," Olle v. Henry & Wright Corp., 910 F.2d 357, 365 (6th Cir. 1990), such as when a fraud is perpetrated. Barrett v. Sec'y of Health & Human Svcs., 840 F.2d 1259, 1263 (6th Cir. 1987).

Petitioner alleges a fraud upon the Court related to his claim that he was denied his right to self-representation. Pet'r's Mot. at 1. Petitioner claims that the Michigan Court of Appeals, in affirming his convictions, erroneously concluded that, contrary to Petitioner's claims before the trial court, he had not successfully represented himself previously. Id. at 2. The Michigan Court of Appeals noted that it had reversed a previous conviction because the trial court had improperly allowed Petitioner to represent himself. Pet'r's Br. at 2. Petitioner argues that, while the Michigan Court of Appeals correctly referenced that prior reversal, the Michigan Court of Appeals failed to recognize that, in 1994, he obtained an acquittal while representing himself against armed robbery charges. Id. at 3. He argues that the Attorney General, in its response to

his habeas petition, perpetrated a fraud against this Court by repeating the mistaken argument that he had not successfully represented himself. Id.

In support of his argument regarding his previous self-representation, Petitioner attaches a docket sheet for an Oakland County Circuit Court criminal case. Pet'r's Ex. C (cm/ecf Pg ID 470). The named defendant in that case is Collier A. Bishop, which Petitioner states is one of his many aliases. Pet'r's Mot. at 2 n.2. The Court assumes without deciding that Collier A. Bishop is an alias of Petitioner. The docket sheet shows that Petitioner was charged with two counts of armed robbery and two counts of felony firearm on January 13, 1994, and that his court-appointed attorney was discharged on April 20, 1994. Ex. C. A new court-appointed attorney was assigned on May 6, 1994. Id. The trial commenced on September 12, 1994. Id. On September 19, 1994, the jury acquitted Petitioner on all counts. Id.

Notably, Petitioner directs the Court to other entries in the docket, such as the dates of the trial, but Petitioner does not reference the entry appointing counsel on May 6, 1994. The Court finds that Petitioner has failed to present clear and convincing evidence because the docket sheet indicates that Petitioner was represented by counsel when he was acquitted. Accordingly, the Court rejects the premise upon which Petitioner bases his allegations of a fraud upon the Court and denies Petitioner's motion for relief from judgment (Dkt. 26).

SO ORDERED.

Dated: October 15, 2013
Flint, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES BLUNT,

Petitioner,

v.

MARY BERGHUIS,

Respondent.

Case No. 08-CV-14808

HON. MARK A. GOLDSMITH

OPINION AND ORDER GRANTING PETITIONER'S MOTION FOR EXTENSION OF TIME (Dkt. 29) AND DENYING PETITIONER'S MOTION FOR RECONSIDERATION (Dkt. 30)

Petitioner Charles Blunt filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his convictions for bank robbery, two counts of armed robbery, felon-in-possession of a firearm, carrying a concealed weapon, second-degree fleeing a police officer, and possession of a firearm during the commission of a felony. Pet. (Dkt. 1). The Court denied the petition on April 5, 2011. 4/5/11 Order (Dkt. 13). The Sixth Circuit affirmed the Court's decision on November 20, 2012. Blunt v. Woods, 505 F. App'x 569 (6th Cir. 2012). Petitioner then filed a motion for relief from judgment (Dkt. 26), which the Court denied, see 10/15/13 Order (Dkt. 27). This matter is once again before the Court on Petitioner's motion for extension of time (Dkt. 29) and motion for reconsideration (Dkt. 30).

Petitioner seeks an extension of time within which to file a motion for reconsideration of the Court's order denying the motion for relief from judgment. He filed the motion within 14 days of the Court's denial of his motion for relief from judgment. The Court finds that the

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request is made in good faith, grants the motion, and considers the motion for reconsideration as timely filed.

Petitioner's motion for reconsideration is governed by Local Rule 7.1(h)(3). Under that Local Rule, this Court will not grant a motion for reconsideration that merely presents "the same issues ruled upon by the court, either expressly or by reasonable implication." E.D. Mich. L.R. 7.1(h)(3). The movant must (i) demonstrate a "palpable defect" by which the court and the parties have been "misled," and (ii) show "that correcting the defect will result in a different disposition of the case." Id. A "palpable defect" is an error that is "obvious, clear, unmistakable, manifest, or plain." United States v. Cican, 156 F.Supp. 2d 661, 668 (E.D. Mich. 2001).

Here, Petitioner's motion for reconsideration relates to his motion for relief from judgment, wherein Petitioner sought relief from judgment under Federal Rules of Civil Procedure 60(d)(3) and 60(b)(6). Petitioner claimed that the Michigan Court of Appeals, in affirming his convictions, erroneously concluded that, contrary to Petitioner's representations to the trial court, he had not successfully represented himself previously. Pet'r Mot. at 1-2 (Dkt. 26). Petitioner argued that he did, in fact, obtain an acquittal in 1994, while representing himself against armed robbery charges. He also argued that the Michigan Attorney General, in its response to his habeas petition, perpetrated a fraud against this Court by repeating the mistaken argument that he had not successfully represented himself. Id.

The Court denied Petitioner's motion because he failed to present clear and convincing evidence that he was not represented by counsel in that proceeding. 10/15/13 Order. In particular, the Court observed that the docket sheet submitted by Petitioner in support of his motion showed that he had a court-appointed attorney discharged on April 20, 1994, but that it also showed that a new court-appointed attorney was assigned on May 6, 1994. Id. at 3 (citing

Pet'r Ex. C (cm/ecf Pg ID 470)). The Court also noted that trial commenced on September 12, 1994, and the jury acquitted Petitioner one week later, but that Petitioner did not reference the appointment of counsel on May 6, 1994. Id. (citing Pet'r Ex. D (cm/ecf Pg ID 471)). The Court found that Petitioner had failed to present clear and convincing evidence because the docket sheet indicated that Petitioner was represented by counsel when he was acquitted. Id. Consequently, the Court rejected the premise upon which Petitioner based his allegations of a fraud upon the Court and denied Petitioner's motion for relief from judgment. Id.

In his motion for reconsideration, Petitioner argues that he has obtained clear and convincing evidence that he represented himself at the 1994 trial — a copy of the trial court's April 20, 1994 order discharging his attorney and allowing Petitioner to represent himself. Pet'r Mot. for Recon. at 2 (Dkt. 30). This order does not demonstrate that the Court committed a "palpable defect" that was "obvious, clear, unmistakable, manifest, or plain." Cican, 156 F.Supp. 2d at 668. The trial court's April 20, 1994 order fails to address the subsequent docket entry indicating that a new court-appointed attorney was assigned on May 6, 1994. Pet'r Ex. C (cm/ecf Pg ID 470).

In addition, Petitioner's new evidence does not meet the standard for a motion for relief from judgment based on a fraud on the court. "Fraud on the court consists of 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 of the truth; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) deceives the court." Johnson v. Bell, 605 F.3d 333, 339 (6th Cir. 2010) (quotation marks and citations omitted). Petitioner bears the burden of proving existence of fraud upon the court by clear and convincing evidence. Id.

Petitioner has not provided clear and convincing evidence of Petitioner's self-representation because the April 20, 1994 order fails to address the subsequent docket entry indicating that a new court-appointed attorney was assigned on May 6, 1994. Pet'r Ex. C (cm/ecf Pg ID 470). Even assuming that Petitioner did represent himself in that proceeding, he has not shown that the Michigan Attorney General's statements to the contrary were "intentionally false, willfully blind to the truth, or in reckless disregard of the truth" so as to constitute fraud on the court. Johnson, 605 F.3d at 339. In fact, the ambiguity regarding the question of self-representation arising from the trial court record supports a finding that the Michigan Attorney General did not intentionally disregard the truth.

Accordingly, the Court denies the motion for reconsideration (Dkt. 30).

SO ORDERED.

Dated: June 9, 2014
Flint, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on June 9, 2014.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES BLUNT,

Petitioner,

v.

MARY BERGHUIS,

Respondent.

Case Number 08-CV-14808

HON. MARK A. GOLDSMITH

ORDER DECLINING TO ISSUE CERTIFICATE OF APPEALABILITY RELATED TO THE COURT'S OPINION AND ORDER DENYING PETITIONER'S RULE 60(b) MOTION (Dkt. 31)

Petitioner Charles Blunt filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He challenges his state court convictions for bank robbery, two counts of armed robbery, felon-in-possession of a firearm, carrying a concealed weapon, second-degree fleeing a police officer, and possession of a firearm during the commission of a felony. The Court denied the petition in an Opinion and Order dated April 5, 2011 (Dkt. 13), which was affirmed by the Sixth Circuit, see Dkt. 22. Petitioner then filed a Rule 60(b) motion, which the Court denied in an Opinion and Order dated October 15, 2013 (Dkt. 27). Petitioner has now filed a notice of appeal of the Court's denial of his motion for relief from judgment. 6/24/13 Notice (Dkt. 32).

Before Petitioner may appeal the Court's decision denying his motion, a certificate of appealability (COA) must issue. 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b); United States v. Hardin, 481 F.3d 924, 926 (6th Cir. 2007) (requiring a certificate of appealability as a prerequisite for a habeas petitioner's appeal of the denial of a Rule 60(b) motion). A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional

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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. The Supreme Court has also explained that "[t]his threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims." Miller–El v. Cockrell, 537 U.S. 322, 336 (2003). "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." Id. at 338 (quotation marks omitted).

The Court denied habeas corpus relief, finding both of Petitioner's claims meritless. Petitioner's motion for relief from judgment alleged a fraud upon the Court related to his claim that he was denied his right to self-representation. Petitioner argued that the Michigan Court of Appeals' decision was based upon an erroneous conclusion that he had not previously successfully represented himself in a criminal proceeding, when, in fact, he had. The Court denied the motion because the documents submitted by Petitioner in support of his motion failed to establish that the Michigan Court of Appeals was incorrect in finding that Petitioner had not previously gained an acquittal when representing himself. The Court finds that jurists of reason would not find the conclusion that the motion should be denied to be debatable or wrong. See Slack, 529 U.S. at 484.

Accordingly, the Court declines to issue a certificate of appealability.

SO ORDERED.

Dated: June 30, 2014
Flint, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on June 30, 2014.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager

No. 14-1819

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CHARLES BLUNT,

Petitioner-Appellant,

v.

MARY BERGHUIS, Warden,

Respondent-Appellee.

ORDER

Charles Blunt, a Michigan prisoner proceeding pro se, appeals the district court's denial of his Federal Rule of Civil Procedure 60(b) and 60(d) motion for relief from judgment, which sought relief from the district court's judgment denying his habeas petition, filed pursuant to 28 U.S.C. § 2254. Blunt has filed an application for a certificate of appealability.

In 2006, Blunt was convicted on two counts of armed robbery and on one count each of bank robbery, second-degree fleeing an officer, being a felon in possession of a firearm, carrying a concealed weapon, and possessing a firearm during the commission of a felony. He was sentenced as a fourth habitual offender to a total of forty to eighty years of imprisonment. The Michigan Court of Appeals affirmed Blunt's convictions and sentences on direct appeal. *People v. Blunt*, No. 272632, 2007 WL 2549867 (Mich. Ct. App. Sept. 6, 2007). The Michigan Supreme Court denied leave to appeal. *People v. Blunt*, 743 N.W.2d 22 (Mich. 2008).

Blunt filed a timely federal habeas petition, arguing that his convictions for both armed robbery and bank robbery violated the Double Jeopardy Clause and that he was improperly deprived of his Sixth Amendment right to represent himself. The district court denied the petition, finding that Blunt was not entitled to relief on the merits of his claims. This court

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affirmed. *Blunt v. Woods*, 505 F. App'x 569 (6th Cir. 2012), *cert. denied*, 133 S. Ct. 1738 (2013).

Blunt then filed a motion for relief from judgment under Rule 60(b) and 60(d), arguing that the state committed fraud by arguing to the Michigan Court of Appeals and to the district court that Blunt had lied to the trial court when he stated that he had previously represented himself in a criminal trial and secured an acquittal. Blunt acknowledged that he was convicted of the charges against him when he represented himself at a 1989 criminal trial, but he contended that he also represented himself when he was charged with armed robbery in 1994, and the jury in that case acquitted him. Blunt submitted a docket sheet from a 1994 Oakland County criminal case against Collier Bishop, one of Blunt's aliases, which purportedly showed that Blunt proceeded to trial and was found not guilty after his attorney was discharged.

The district court denied Blunt's motion. It acknowledged that the Oakland County docket sheet showed that Blunt's initial court-appointed attorney was discharged on April 20, 1994, but it pointed out that the docket sheet also showed that a new attorney was appointed on May 6, 1994, prior to the commencement of trial on September 12, 1994. Thus, the district court found that Blunt failed to show that he had represented himself during the 1994 trial. Blunt filed a motion for reconsideration, arguing that he could now prove that he had represented himself during the 1994 trial. He attached to his motion an order entered by the Oakland County trial court on April 20, 1994, which discharged Blunt's court-appointed attorney. The district court denied the motion, finding that "[t]he trial court's April 20, 1994 order fails to address the subsequent docket entry indicating that a new court-appointed attorney was assigned on May 6, 1994."

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make this showing in the context of the denial of a Rule 60(b) motion, the applicant must demonstrate that jurists of reason could debate whether (1) the district court properly denied the motion, and (2) the issues raised are adequate to deserve further review. *See Slack v. McDaniel*, 529 U.S. 473, 483-84

(2000); *Harbison v. Bell*, 503 F.3d 566, 568-69 (6th Cir. 2007), *rev'd on other grounds*, 556 U.S. 180 (2009).

Reasonable jurists could not debate the district court's conclusion that Blunt was not entitled to relief under Rule 60(b) or 60(d), because the evidence that Blunt presented failed to support his claim that the state committed fraud upon the court. As the district court noted, the docket sheet that Blunt submitted showed that Blunt's court-appointed attorney was discharged on April 20, 1994, but it also showed that a new attorney was appointed on May 6, 1994. There is no indication on the docket sheet that the second court-appointed attorney was discharged prior to, or during, trial. Blunt did not directly address the May 6, 1994, re-appointment of counsel in his motion for reconsideration. Although he submitted the trial court's April 20, 1994, order discharging his first court-appointed attorney, the motion itself noted that Blunt would either represent himself at trial or a new attorney would be appointed prior to the start of trial. This order in no way undermines the district court's determination that a new attorney was appointed on May 6, 1994.

Accordingly, Blunt's application for a certificate of appealability is denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

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