

United States Court of Appeals For the First Circuit

No. 18-1757

CHRISTOPHER THORNTON,

Petitioner, Appellant,

v.

PATRICIA ANNE COYNE-FAGUE, Acting Director of RI Department of Corrections,

Respondent, Appellee.

Before

Torruella, Lynch and Kayatta,
Circuit Judges.

JUDGMENT

Entered: June 25, 2019

Christopher Thornton, a Rhode Island state inmate proceeding pro se, appeals the district court's decision construing his "motion to reopen" and "motion for return of filing fee" as a Fed. R. Civ. P. 60 motion for relief from judgment and denying the motion as untimely. Having reviewed relevant portions of the record and Thornton's filings with this court, we AFFIRM, substantially for the reasons indicated by the district court. See 1st Cir. R. 27.0(c) (providing for summary disposition when "no substantial question is presented"); see also Fed. R. Civ. P. 60(c) (motion "must be made within a reasonable time"); Ungar v. Palestine Liberation Org., 599 F.3d 79, 83 (1st Cir. 2010) (denial of Rule 60 relief reviewed for abuse of discretion). All other pending motions, including the motion to proceed in forma pauperis, are DENIED as moot.

By the Court:

Maria R. Hamilton, Clerk

cc:

Christopher Thornton
Lauren S. Zurier

United States Court of Appeals For the First Circuit

No. 18-1757

CHRISTOPHER THORNTON,

Petitioner, Appellant,

v.

PATRICIA ANNE COYNE-FAGUE, Acting Director of RI Department of Corrections,
Respondent, Appellee.

Before

Howard, Chief Judge,
Torruella, Lynch, Thompson,
Kayatta and Barron, Circuit Judges.

ORDER OF COURT

Entered: August 9, 2019

Pursuant to First Circuit Internal Operating Procedure X(C), the petition for rehearing en banc has also been treated as a petition for rehearing before the original panel. The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be DENIED.

By the Court:

Maria R. Hamilton, Clerk

cc:
Christopher Thornton
Lauren S. Zurier

United States Court of Appeals For the First Circuit

No. 18-1757

CHRISTOPHER THORNTON

Petitioner - Appellant

v.

PATRICIA ANNE COYNE-FAGUE, Acting Director of RI Department of Corrections

Respondent - Appellee

MANDATE

Entered: August 16, 2019

In accordance with the judgment of June 25, 2019, and pursuant to Federal Rule of Appellate Procedure 41(a), this constitutes the formal mandate of this Court.

By the Court:

Maria R. Hamilton, Clerk

cc:

Christopher Thornton
Lauren S. Zurier

United States Court of Appeals For the First Circuit

No. 18-1757

CHRISTOPHER THORNTON

Petitioner - Appellant

v.

ASHBEL T. WALL, Director of RI Department of Corrections

Respondent - Appellee

ORDER OF COURT

Entered: October 4, 2018
Pursuant to 1st Cir. R. 27.0(d)

This court has docketed petitioner-appellant's appeal from the denial of his petition for writ of habeas corpus under 28 U.S.C. § 2254. The case cannot go forward unless a certificate of appealability issues. 28 U.S.C. § 2253. The district court declined to issue a certificate of appealability on August 8, 2018. Petitioner-appellant has filed a motion for a certificate of appealability in the court of appeals.

Accordingly, the above captioned case will be submitted to this court for a determination whether a certificate of appealability should issue. If a certificate is denied, the appeal will be terminated.

By the Court:

Maria R. Hamilton, Clerk

cc:

Christopher Thornton
Lauren S. Zurier

United States Court of Appeals For the First Circuit

No. 18-1757

CHRISTOPHER THORNTON,

Petitioner, Appellant,

v.

ASHBEL T. WALL, Director of RI Department of Corrections,

Respondent, Appellee.

ORDER OF COURT

Entered: September 11, 2018

Petitioner has filed a motion for limited remand to the district court for it to decide his motion for reconsideration. The motion is denied as the district court has not stated that "it would grant the motion or that the motion raises a substantial issue." Fed. R. App. P. 12.1(a).

By the Court:

/s/ Margaret Carter, Clerk

cc:

Christopher Thornton
Lauren S. Zurier

Orders on Motions

1:02-cv-00412-JJM-PAS Thornton v. Wall **CASE CLOSED on 03/04/2005**

U.S. District Court

District of Rhode Island

Notice of Electronic Filing

The following transaction was entered on 8/8/2018 at 11:17 AM EDT and filed on 8/8/2018

Case Name: Thornton v. Wall

Case Number: 1:02-cv-00412-JJM-PAS

Filer:

WARNING: CASE CLOSED on 03/04/2005

Document Number: 48

Docket Text:

ORDER denying [43] Motion for Reconsideration ; denying [44] Motion for Leave to Appeal in forma pauperis; denying [45] Motion for Certificate of Appealability- So Ordered by District Judge John J. McConnell, Jr. on 8/8/2018 (Barletta, Barbara)

1:02-cv-00412-JJM-PAS Notice has been electronically mailed to:

Lauren Sandler Zurier lzurier@riag.ri.gov, talfieri@riag.ri.gov

1:02-cv-00412-JJM-PAS Notice has been delivered by other means to:

Christopher Thornton
ACI
P.O. Box 8273
Cranston, RI 02920

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP_dcecfStamp_ID=1096917572 [Date=8/8/2018] [FileNumber=1321568-0]
[4c2f5ec3cbbc14ce16ef2c813355935c2361d5496817338bb8380aa7b9c8031d1d4b
bc8151d272a12e7162f3c5cd6082e5e1e46eb0d17914837ec6a157bef9d4]]

MIME-Version:1.0
From:cmeccf@rid.uscourts.gov
To:cmeccfnef@rid.uscourts.gov
Bcc:
--Case Participants: Lauren Sandler Zurier (lzurier@riag.ri.gov, talfieri@riag.ri.gov), District Judge John J. McConnell, Jr. (jjmnef@rid.uscourts.gov), Magistrate Judge Patricia A. Sullivan (mag_judge_sullivan@rid.uscourts.gov, pasnef@rid.uscourts.gov)
--Non Case Participants:
--No Notice Sent:

Message-Id:<1317329@rid.uscourts.gov>
Subject:Activity in Case 1:02-cv-00412-JJM-PAS Thornton v. Wall Order on Motion to Reopen Case
Content-Type: text/html

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court

District of Rhode Island

Notice of Electronic Filing

The following transaction was entered on 7/25/2018 at 7:33 PM EDT and filed on 7/25/2018

Case Name: Thornton v. Wall
Case Number: 1:02-cv-00412-JJM-PAS
Filer:
WARNING: CASE CLOSED on 03/04/2005
Document Number: No document attached

Docket Text:

TEXT ORDER entered by District Judge John J. McConnell, Jr.: Petitioners Motion to Reopen [39] and his Motion for Return of Filing Fee [40] are DENIED. In essence, Petitioner is moving for Relief from a Judgment or Order pursuant to Fed. R. Civ. P. 60. That rule requires that such motions be made within a reasonable time. Fed. R. Civ. 60 (c)(1). The Petitioner is seeking relief from an order entered in 2005 over 13 years ago. Petitioner did not make his motions within a reasonable time.(Perry, Frank)

1:02-cv-00412-JJM-PAS Notice has been electronically mailed to:

Lauren Sandler Zurier lzurier@riag.ri.gov, talfieri@riag.ri.gov

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CHRISTOPHER THORNTON,)	
Petitioner,)	
)	
v.)	C.A. No. 02-412-JJM-PAS
)	
ASHBEL T. WALL,)	
Respondent.)	
)	

ORDER

Petitioner Christopher Thornton has asked the Court to reconsider its July 25, 2018 Text Order denying his motion to reopen this case. ECF No. 43. He has also moved for leave to proceed *in forma pauperis* (ECF No. 44) and asks for a certificate of appealability (ECF No. 45). After filing these motions, he appealed the July 25, 2018 Text Order. ECF No. 46.

First, this Court will not issue a certificate of appealability pursuant to Federal Rule of Appellate Procedure 22 and Rule 11 of the Rules Governing Proceedings Under § 2254. A certificate of appealability will 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 satisfy this requirement, the petitioner must show that "reasonable jurists could debate whether (or, for that matter, agree that) 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

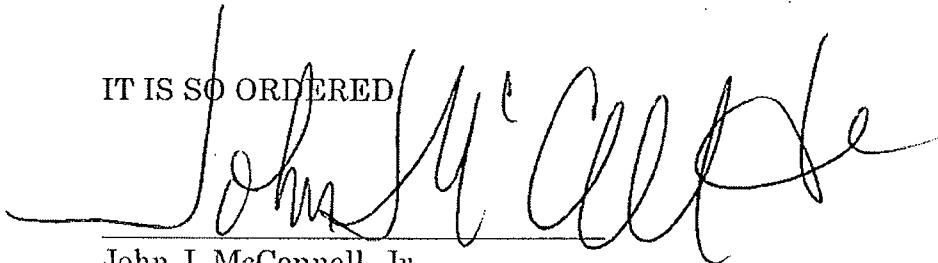
n.4 (1983)). Mr. Thornton has shown neither of these requirements, so no certificate of appealability will issue.

Second, the Court denies Mr. Thornton's motion for leave to proceed *in forma pauperis*. The Court construes this as a motion to conduct his appeal *in forma pauperis* in light of the foregoing, that issue is moot. Mr. Thornton has already been denied leave to proceed *in forma pauperis* in this Court. ECF No. 6.

Finally, the Court denies without prejudice Mr. Thornton's motion for reconsideration. When Mr. Thornton filed a notice of appeal, this Court was divested of jurisdiction. If the case is returned to this Court, Mr. Thornton may refile his motion.

For the foregoing reasons, Mr. Thornton's motions (ECF Nos. 43, 44, and 45) are DENIED as stated.

IT IS SO ORDERED


John J. McConnell, Jr.
United States District Judge

August 8, 2018

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CHRISTOPHER THORNTON	:	
Petitioner	:	
	:	
v.	:	C.A. 1:02-cv-00412-JJM-PAS
	:	
A.T. WALL, DIRECTOR OF	:	
DEPARTMENT OF CORRECTIONS,	:	
Respondent	:	

**MEMORANDUM IN SUPPORT OF RESPONDENT'S OBJECTION
TO PETITIONER'S MOTION FOR RETURN OF FILING FEE**

Relevant Facts and Travel

The docket in this case indicates that petitioner filed a petition for writ of habeas corpus on September 20, 2002, along with a motion to proceed *in forma pauperis* ("IFP"). Docket Entries ## 1-3. Magistrate Judge Hagopian denied petitioner's IFP motion on September 30, 2002. Docket Entry # 6. On March 31, 2003, Magistrate Judge Hagopian recommended that petitioner's habeas petition be denied and dismissed. Docket Entry # 13. On March 4, 2005, Judge Torres adopted the Magistrate Judge's recommendation and denied the petition; judgment in favor of respondent entered the same day. Docket Entries ## 23, 36.

On March 14, 2005, petitioner noticed an appeal from the denial of habeas relief as well as the denial of his application for certificate of appealability to the First Circuit Court of Appeals. Docket Entries ## 24, 27, 30. He never again moved to proceed in forma pauperis, but instead complied with the Court's order to pay a \$255.00 filing fee. Docket Entry # 33 (entries of May 5 and May 12, 2005). On May 31, 2005, petitioner voluntarily dismissed his pending appeal. Docket Entries ## 35, 37.

Discussion

Petitioner now asks this Court to return a \$255.00 filing fee that he paid back in 2005 in order to appeal to the First Circuit from this Court's denial of habeas relief. *Motion for Return of Fee*, p. 1. Petitioner asserts that he was required to pay the fee after this Court denied his IFP motion. *Motion for Return of Fee*, p. 1. In fact, the docket entries reveal that: (1) petitioner was able to pay this Court's filing fee after this Court denied his IFP application upon the initial filing of his habeas petition; (2) petitioner never sought IFP status in the First Circuit at all; and (3) petitioner had the financial resources to pay the \$255.00 filing fee the First Circuit required.

This Court's denial of petitioner's IFP motion in 2002 establishes that he was not financially destitute in 2002. Petitioner's payment of the \$255.00 filing fee in 2005 establishes that he was not penniless in 2005, either. The State suggests that petitioner would not have qualified to be relieved of the First Circuit's filing fee regardless of whether he was a habeas petitioner or a traditional civil plaintiff. *See Austin v. Vose*, 40 F. Supp. 2d 487, 488 (D. Mass. 1999).

Even assuming *arguendo* that petitioner now has the right, more than fifteen years after the fact, to challenge the Court's 2002 ruling denying him IFP status (which respondent does not concede), petitioner has submitted nothing to demonstrate that this Court's 2002 decision was erroneous. *Cf. Washington v. Wall*, No. CA 03-444 S, 2014 WL 2781336, at *4 (D.R.I. June 9, 2014) (Sullivan, M.J.) ("With no information regarding [petitioner's] financial status beyond the obvious fact that he is incarcerated, I cannot find him entitled to proceed IFP . . .").

For the foregoing reasons, respondent respectfully requests that petitioner's motion be denied.

Respectfully submitted,

PETER F. KILMARTIN
ATTORNEY GENERAL

/s/ Lauren S. Zurier

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Department of Attorney General
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Date: July 25, 2018

CERTIFICATION

Pursuant to LR Gen 309(c), I hereby certify that I filed this document electronically on July 25, 2018, and that it is available for viewing and downloading from the ECF system. I also certify that I sent a copy of the within motion to the following by first-class mail on the same date:

Christopher Thornton, pro se
Maximum Security
P.O. Box 8273
Cranston, R.I. 02920

/s/ Lauren S. Zurier

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