

FILED: October 8, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6397
(1:14-cv-01335-TSE-MSN)

KEITH D. GOODMAN

Plaintiff - Appellant

v.

EDDIE PEARSON, Warden, Greenville Corr. Center

Respondent - Appellee

O R D E R

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: Chief Judge Gregory, Judge Thacker, and Senior Judge Shedd.

For the Court

/s/ Patricia S. Connor, Clerk

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 19-6397

KEITH D. GOODMAN,

Plaintiff - Appellant,

v.

EDDIE PEARSON, Warden, Greenville Corr. Center,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T. S. Ellis, III, Senior District Judge. (1:14-cv-01335-TSE-MSN)

Submitted: August 13, 2019

Decided: August 20, 2019

Before GREGORY, Chief Judge, THACKER, Circuit Judge, and SHEDD, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Keith D. Goodman, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Keith D. Goodman seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 (2012) petition. The order is 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 Goodman has not made the requisite showing. Accordingly, we deny his motion for a certificate of appealability, deny leave to proceed in forma pauperis, and dismiss the appeal. 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

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

Alexandria Division

Keith D. Goodman,)
Petitioner,)
)
v.)
)
Eddie Pearson,)
Respondent.)
)
1:14cv1335 (TSE/MSN)

ORDER

Keith D. Goodman, a Virginia inmate proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the execution of his sentence by the Virginia Department of Corrections (“VDOC”). By Memorandum Opinion and Order dated December 8, 2015, the petition was dismissed, with prejudice, as time barred. Dkt. No. 27. Petitioner appealed the December 8, 2015 Order to the United States Court of Appeals for the Fourth Circuit. Dkt. No. 32. The Fourth Circuit dismissed the appeal. Appeal No. 16-6426.

Petitioner has now filed a Motion to Vacate or Return Petition and a Motion for Leave to Amend. Dkt. Nos. 43-44. For the reasons that follow, petitioner's motions must be denied.

Petitioner is confined pursuant to two 2004 state court judgments; one from the Circuit Court for the City of Norfolk and the other from the Circuit Court for the City of Suffolk. Dkt. No. 1. More specifically, on September 23, 2004, petitioner was convicted of sixteen counts of carnal knowledge of a minor, one count of using electronic means for procuring minors for obscene activities, one count of indecent liberties, one count of solicitation of a child to perform in sexually explicit visual material, one count of contributing to the delinquency of a minor, and one count of crimes against nature in the Circuit Court for the City of Suffolk. Id. Petitioner

was sentenced to five years, with four years suspended, for each of the sixteen counts of carnal knowledge of a minor; four years for using electronic means for procuring minors for obscene activities; five years totally suspended for indecent liberties; five years totally suspended for solicitation of a child to perform in sexually explicit visual material; twelve months totally suspended for contributing to the delinquency of a minor; and five years totally suspended for crimes against nature in the Suffolk Circuit Court. Id. The next day, petitioner was convicted of one count of carnal knowledge of a minor in the Circuit Court for the City of Norfolk and sentenced to ten years, with five years suspended. Id. All of petitioner's sentences run consecutively. Id. In total, petitioner was sentenced to an active sentence of twenty-five years. Id.

In the instant § 2254 petition, petitioner challenged the calculation of his good time release date which is based, in part, on an inmate's total sentence from all of his state court convictions. Id. Specifically, petitioner argued that his good time release date was increased by eighteen days when VDOC changed the system they used to calculate good time credits. Id. As previously stated, the petition was deemed time barred and petitioner's appeal was dismissed.

Petitioner has now filed a Motion to Vacate or Return Petition and a Motion for Leave to Amend.¹ Dkt. Nos. 43-44. Petitioner claims that he is entitled to relief pursuant to Rule 60(b) of the Federal Rules of Civil Procedure because the instant petition was filed in violation of Rule 2(e) of the Rules Governing Section 2254 Cases. Dkt. No. 43-44. Rule 2(e) states that “[a] petitioner who seeks relief from judgments of more than one state court must file a separate petition covering the judgment or judgments of each court.” 28 U.S.C. § 2254 Rule 2(e).

¹ Petitioner asserts essentially the same argument in both motions. In fact, petitioner's Motion to Amend is included, in its entirety, within the Motion to Vacate or Return Petition.

Petitioner argues that, because he wrote on the face of the instant petition that he was challenging the judgement of conviction from both the Norfolk and Suffolk Circuit Courts, the petition violates Rule 2(e). Dkt. Nos. 43-44. Thus, petitioner claims, any future § 2254 petition he files regarding these convictions will be deemed second or successive, and “would require the district judge to ignore a Rule 2(e) violation, arbitrarily make a selection of one of two listed judgments for comparison purposes, and substitute his judgment for Petitioner’s.” Id. Petitioner asserts that the only remedy to the Rule 2(e) violation is to vacate the December 8, 2015 Order and then either (1) “return” the petition as being in violation of Rule 2(e) to allow petitioner to correct it, if he so wishes, or (2) allow petitioner to submit an amended petition in which he states that he is only challenging the conviction of the Norfolk Circuit Court. Id.

Petitioner’s arguments fail because Rule 2(e) does not apply to the instant petition. First, petitioner’s argument that Rule 2(e) applies to the instant petition is based on form over substance. In other words, petitioner is using the language of the form § 2254 petition to argue that he was challenging two different state court judgments in the instant petition when, in fact, he was challenging the computation of his good time release date. Petitioner stated as much in the instant petition when he claimed that he “is challenging the execution of his sentence ... not the underlying judgment of conviction at this time.” Dkt. No. 1 at 17. This is also supported by the arguments in and analysis of the petition. Therefore, even though the face of the instant petition technically states that petitioner was challenging both the Norfolk and Suffolk Circuit Court convictions, in reality, he was not seeking relief from either judgment, but rather, from the execution of his sentence. Because the plain language of Rule 2(e) states that it only applies when a petitioner is “seek[ing] relief from judgments of more than one state court,” and

petitioner was not seeking relief from any state court judgment in the instant petition, Rule 2(e) does not apply.

Second, petitions challenging the calculation of good time credits could not possibly comply with Rule 2(e) when a petitioner has judgments from more than one state court. For example, in the instant petition, although petitioner asserted that most of the increase in his good time release date was based on his sixteen one-year sentences from the Suffolk Circuit Court, the calculation of his good time release date was based on all of his sentences combined, as well as other factors. See Dkt. No. 1, Portman Aff. Thus, when challenging the calculation of good time credits, a petitioner is necessarily challenging the execution of the total sentence imposed, and he cannot separate out each state court judgment. Therefore, the instant petition did not violated Rule 2(e), and petitioner's motions must be denied.²

Accordingly, it is hereby

ORDERED that petitioner's Motion to Vacate or Return Petition [Dkt. No. 43] and Motion for Leave to Amend [Dkt. No. 44] be and are DENIED.

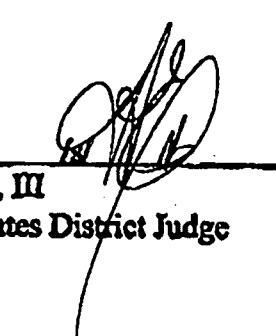
² As to petitioner's argument that the determination that future petitions were successive would "require the district judge to ... arbitrarily make a selection of one of two listed judgments for comparison purposes, and substitute his judgment for Petitioner's," it is noted that (1) petitioner argued that his good time release date was increased by sixteen days based on his sixteen one-years sentences, which were issued by the Suffolk Circuit Court, and (2) petitioner exhausted his state court remedies by filing a state habeas petition in the Suffolk Circuit Court. Petitioner filed a second in time § 2254 petition challenging his underlying Suffolk convictions which was dismissed as successive, without prejudice to petitioner's right to move a panel of the United States Court of Appeals for the Fourth Circuit for an order authorizing this Court to consider the petition. Goodman v. Hamilton, Case No. 1:17cv279 (CMH/TCB). Petitioner's appeal of that decision was dismissed. Appeal No. 17-7634.

To appeal this decision, petitioner must file a written notice of appeal with the Clerk's Office within thirty (30) days of the date of this Order. 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. Failure to timely file a notice of appeal waives the right to appeal this decision. 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 stated above, this Court expressly declines to issue such a certificate.

The Clerk is directed to send a copy of this Order to petitioner.

Entered this 26 day of February 2019.

Alexandria, Virginia


T. S. Ellis, III
United States District Judge