UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7215

DANIEL R. MCCLAIN, a/k/a Mr. McClain,

Petitioner - Appellant,

v.

WARDEN, Turbeville Correctional Institution,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Margaret B. Seymour, Senior District Judge. (0:18-cv-03081-MBS)

Submitted: December 19, 2019 Decided: December 23, 2019

Before NIEMEYER, AGEE, and QUATTLEBAUM, Circuit Judges.

Dismissed in part and affirmed in part by unpublished per curiam opinion.

Daniel R. McClain, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Daniel R. McClain seeks to appeal the district court's order accepting the recommendation of the magistrate judge, dismissing as untimely his 28 U.S.C. § 2254 (2012) petition, and denying his motion to recuse.* An order denying a § 2254 petition 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 McClain has not made the requisite showing. Accordingly, we deny McClain's motion for a certificate of appealability and dismiss the appeal in part. To the extent that McClain challenges the denial of his motion to recuse, we find no abuse of discretion and affirm for the reasons stated by the district court. *McClain v. Warden,* No. 0:18-cv-03081-MBS (D.S.C. filed Aug. 5, 2019; entered Aug. 6, 2019). We deny McClain's motion for default judgment.

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 PART,
AFFIRMED IN PART

FILED: January 27, 2020

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(0:18-cv-03081-MBS)

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ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc. Further, the court denies the motion to clarify.

For the Court

/s/ Patricia S. Connor, Clerk

U.S. Sup Ct petition
Rule 10(a) Writ of Certiorari; Motion For Relief; Motion For Cross-Claims

(Question(s)) Idea - on independent page

Q. 1) Why are alleged time limit excuses being erroneously misused to dismiss abundant reversable error issues?

Financial Certificate
Motion For Leave To Proceed In forma Pauperis
Cover Sheet -; Brief; Citations List; ~~Appendix~~, Table of Contents (over 5 pgs).

Q. 2) What precisely is an Unalienable Right?

Case History through Courts - dispositions

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Daniel R. McClain, Petitioner, v. Warden, Turbeville Correctional Institution, Respondent.	)	C/A No. 0:18-cv-3081-MBS **OPINION AND ORDER**

Petitioner Daniel R. McClain is a prisoner in custody of the South Carolina Department of Corrections who currently is housed at Turbeville Correctional Institution. This matter is before the court on a motion to "revisit" a motion for recusal, filed by Petitioner on September 17, 2019 , and a motion entitled a "Motion For Default" filed by Petitioner on October 24, 2019. ECF Nos. 74, 76. In Petitioner's "Motion For Default," Petitioner asserts that the court did not address his September 17, 2019 motion to "revisit" his previous motion for recusal. Petitioner originally filed his motion for recusal, entitled a "Motion for Change of Venue; Notice of Conflict of Interest" on December 12, 2018. ECF No. 9. The court issued an order on August 5, 2019 which specifically addressed Petitioner's "Motion for Change of Venue; Notice of Conflict of Interest." The court denied that motion because Petitioner did not cite to any "extrajudicial source of bias or prejudice," and dismissed Petitioner's case with prejudice. ECF No. 66 at 6. The court has thus already addressed Petitioner's motion for recusal.

Should Petitioner seek to have the court reconsider its August 5, 2019 ruling, the court

Appeals has interpreted Rule 59(e) of the Federal Rules of Civil Procedure to allow the court to alter or amend an earlier judgment in three circumstances: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Becker v. Westinghouse Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (quoting Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998)). Accordingly, "the rule permits a district court to correct its own errors, sparing the parties and the appellate courts the burden of unnecessary appellate proceedings." Pac. Ins. Co., 148 F.3d at 403 (quoting Russell v. Delco Remy Div. of Gen. Motors Corp., 51 F.3d 746, 749 (7th Cir. 1995)). A party moving pursuant to Rule 59 must demonstrate more than "mere disagreement" with the court's order to succeed on a Rule 59(e) motion. Hutchinson v. Staton, 994 F.2d 1076, 1082 (4th Cir. 1993). Furthermore, "Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance of judgment, nor may they be used to argue a case under a novel theory that the party had the ability to address in the first instance." Pac. Ins. Co., 143 F.3d at 403; see also 11 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2810.1 (3d ed. 1998). "In general, reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." Id. Judgment was entered on August 5, 2019. Petitioner filed his motion to "revisit" on September 17, 2019. Thus, Petitioner's motion is untimely. Even if Petitioner's motion were timely, Petitioner has not shown a change in law, nor has he presented the court with new evidence, nor has he shown a clear error of law or manifest injustice.