

N.D.N.Y.  
16-cv-1526  
08-cr-701  
Hurd, J.

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 14<sup>th</sup> day of February, two thousand twenty.

Present:

Rosemary S. Pooler,  
Gerard E. Lynch,  
Michael H. Park,  
*Circuit Judges.*

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Marcel Malachowski,

*Petitioner-Appellant,*

v.

19-2560

United States of America,

*Respondent-Appellee.*

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Appellant, pro se, moves to hold the appeal in abeyance; the motion is also construed as seeking a certificate of appealability. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because Appellant has failed to show that "(1) jurists of reason would find it debatable whether the district court abused its discretion in denying the Rule 60(b) motion, and (2) jurists of reason would find it debatable whether the underlying habeas petition, in light of the grounds alleged to support the [Rule] 60(b) motion, states a valid claim of the denial of a constitutional right." *Kellogg v. Strack*, 269 F.3d 100, 104 (2d Cir. 2001) (per curiam).

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

  
Catherine O'Hagan Wolfe

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

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 10<sup>th</sup> day of April, two thousand twenty.

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Marcel Malachowski,

Petitioner - Appellant,

v.

United States of America,

Respondent - Appellee.

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**ORDER**

Docket No: 19-2560

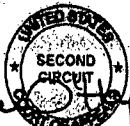
Appellant, Marcel Malachowski, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

Catherine O'Hagan Wolfe



# MANDATE

N.D.N.Y.  
16-cv-1526  
Hurd, J.

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22<sup>nd</sup> day of January, two thousand nineteen.

Present:

Robert A. Katzmann,  
*Chief Judge,*  
Peter W. Hall,  
Gerard E. Lynch,  
*Circuit Judges.*

Marcel Malachowski,

*Petitioner-Appellant,*

v.

18-2501

United States of America,

*Respondent-Appellee.*

Appellant, pro se, moves for a certificate of appealability ("COA"), in forma pauperis status, appointment of counsel, an extension of time to file a COA motion, discovery, a reissuance of his removal order, and to suspend further filings of COA motions. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because Appellant has not shown that "jurists of reason would find it debatable whether the district court was correct in its procedural ruling," as to the untimeliness of the Appellant's motion filed pursuant to 28 U.S.C. § 2255. *Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit



*Catherine O'Hagan Wolfe*

*Catherine O'Hagan Wolfe*

A-2

MANDATE ISSUED ON 03/26/2019

		attached}. (rep) (Entered: 03/25/2019)
03/26/2019	<u>165</u>	MANDATE OF USCA: As to Marcel Malachowski regarding the # <u>162</u> Notice of Appeal – Appellant, pro se, moves for a certificate of appealability ("COA"), in forma pauperis status, appointment of counsel, an extension of time to file a COA motion, discovery, a reissuance of his removal order, and to suspend further filings of COA motions. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because Appellant has not shown that "jurists of reason would find it debatable whether the District Court was correct in its procedural ruling," as to the untimeliness of the Appellant's motion filed pursuant to 28 U.S.C. § 2255. Slack v. McDaniel, 529 U.S. 473, 478 (2000). {Mandate issued on March 26, 2019} (rep) Modified on 3/26/2019 to add mandate issued on language (rep). (Entered: 03/26/2019)
03/26/2019		USCA Case Number is 18–2501 for # <u>162</u> Notice of Appeal that was filed by Marcel Malachowski. (rep) (Entered: 03/26/2019)
04/29/2019	<u>166</u>	MOTION for Recusal, filed by Marcel Malachowski, pro se. {Mailing envelope attached}. (rep) (Entered: 04/30/2019)
05/17/2019	<u>167</u>	LETTER REQUEST: Filed by Marcel Malachowski requesting his # <u>166</u> Motion for Recusal to be held in abeyance. {Mailing envelope attached}. (rep) (Entered: 05/17/2019)
05/17/2019		DOCKET ANNOTATION/CHANGE OF ADDRESS: Upon reviewing the defendant's recent submissions, the clerk notes that the defendant is no longer housed at Big Spring FCI, 1900 Simpler Ave., Big Spring, TX 79720, and is now located at Great Plains Correctional, P.O. Box 400, Hinton, OK 73047. The docket has been updated to note the defendant's most current address. (rep) (Entered: 05/17/2019)
06/06/2019	<u>168</u>	LETTER REQUEST: Filed by Marcel Malachowski, requesting to hold motion for recusal in abeyance until June 26, 2019. {Mailing Envelope attached}. (rep) (Entered: 06/06/2019)
07/01/2019	<u>169</u>	EXHIBITS: In support of the # <u>166</u> MOTION for Recusal, by Marcel Malachowski. (Attachments: # <u>1</u> Cover Letter, # <u>2</u> Mailing Envelope)(rep) (Entered: 07/03/2019)
07/08/2019	<u>170</u>	TEXT ORDER: Petitioners #166 motion for recusal appears to relate to a Fed. R. Civ. P. 60(b) motion that petitioner plans to file at some point in the future. Petitioners #167 letter confirms this view and further requests that the motion for recusal be held in abeyance pending the filing of this future Rule 60(b) motion until June 11, 2019, or until such time as the District Court receives the pleading. Upon review, petitioners motion for recusal affords no basis for relief at this time and is therefore denied without prejudice. So Ordered by Judge David N. Hurd on 7/8/2019.(Copy served upon Marcel Malachowski via regular mail on 7/8/2019)(see) (Entered: 07/08/2019)
07/22/2019	<u>171</u>	MOTION/BRIEF for Leave to Amend Motion Brought Under Rule 60(b) Re: <u>155</u> MOTION to Vacate under 28 U.S.C. 2255 filed by Marcel Malachowski by Marcel Malachowski. (Attachments: # <u>1</u> Mailing Envelope)(hmr) (Entered: 07/23/2019)
08/02/2019	<u>172</u>	MOTION for Recusal by Marcel Malachowski. (Attachments: # <u>1</u> Affirmation, # <u>2</u> Brief in Support of Motion for Recusal, # <u>3</u> Mailing Envelope)(hmr) (Entered: 08/02/2019)
08/02/2019	<u>173</u>	MOTION to vacate order under Rule 60(b) re <u>161</u> Memorandum Decision and Order by Marcel Malachowski. (Attachments: # <u>1</u> Affirmation, # <u>2</u> Brief in Support of Motion to Vacate Order under Rule 60(b), # <u>3</u> Mailing Envelope)(hmr) (Entered: 08/02/2019)
08/02/2019	<u>174</u>	TEXT ORDER: Upon review of #171, #172, and #173, petitioners filing seek relief beyond the scope of Rule 60(b). See, e.g., Hines v. United States, 2006 WL 13013 (N.D.N.Y. Jan. 3, 2006) (Scullin, J.). Accordingly, they are DENIED. So Ordered by Judge David N. Hurd on 8/2/2019.(Copy served upon Marcel Malachowski via regular mail on 8/2/2019)(see) (Entered: 08/02/2019)
08/15/2019	<u>175</u>	NOTICE OF APPEAL by Marcel Malachowski re 174 TEXT ORDER. (Attachments: # <u>1</u> Mailing Envelope) [A filed stamped copy of the Notice of Appeal was mailed to Marcel Malachowski via regular mail to Great Plains Correctional, P.O. Box 400,

		Hinton, OK 73047 on 8/15/2019.](hmr) (Entered: 08/15/2019)
08/15/2019	<u>176</u>	MOTION for Leave to Appeal In Forma Pauperis by Marcel Malachowski. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Mailing Envelope)(hmr) (Entered: 08/15/2019)
08/15/2019	<u>177</u>	ELECTRONIC NOTICE AND CERTIFICATION as to Marcel Malachowski sent to US Court of Appeals re <u>175</u> Notice of Appeal – Final Judgment. (Attachments: # <u>1</u> Criminal Appeal Packet)(hmr) (Entered: 08/15/2019)
08/15/2019		Dkt. No. 177 – Electronic Notice and Certification, along with the Criminal Appeals Packet was mailed to Marcel Malachowski via regular mail to Great Plains Correctional, P.O. Box 400, Hinton, OK 73047 on 8/15/2019 as to Marcel Malachowski. (hmr) (Entered: 08/15/2019)

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In The United States Court of Appeals  
For The Second Circuit

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MARCEL MALACHOWSKI,  
APPELLANT,

V.

UNITED STATES OF AMERICA,  
APPELLEE,

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On Appeal From The United States District  
Court For The Northern District of New York

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Brief of Appellant

Marcel Malachowski, Pro Se  
Great Plains Correctional Facility

P.O.Box 400  
Hinton, OK 73047

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