

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 12th day of August, two thousand twenty.

Present:

Joseph F. Bianco,
Michael H. Park,
Steven J. Menashi,
Circuit Judges.

United States of America,

Appellee,
v. 19-4069

Michael Cook, et al.,

Defendants,

Marcel Malachowski, AKA Sealed Defendant 4,
AKA Memo,

Defendant-Appellant.

Appellant, pro se, moves (1) for reconsideration of an order of an applications judge denying appointment of counsel and (2) to expedite this appeal. The Government moves to dismiss because no certificate of appealability ("COA") has been issued. Upon due consideration, it is hereby ORDERED that the motions are DENIED.

Assuming *arguendo* that a COA is not required to review the district court's decision not to recuse, the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e). With respect to Appellant's remaining arguments challenging the district court's denial of his Rule 60(b) motion, the appeal is DISMISSED because Appellant has not moved for a COA, which is required for such a challenge. *See* 2d Cir. Local R. 22.1(a).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe


Appendix - A

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 20th day of October, two thousand twenty.

United States of America,

Appellee,

v.

Michael Cook, et al.,

ORDER

Docket No: 19-4069

Defendants,

Marcel Malachowski, AKA Sealed Defendant 4, AKA
Memo,

Defendant – Appellant

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

IT IS HEREBY ORDERED that the motion and petition are denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

Catherine O'Hagan Wolfe



Appendix - A

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