APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10710-H

STEVEN JUSTIN VILLALONA,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

Steven Villalona is a federal prisoner serving a 180-month total sentence after he pled guilty to conspiracy to possess with intent to distribute cocaine and possession of a firearm in furtherance of a drug-trafficking offense. He filed a 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence, arguing that his counsel was ineffective for failing to file a motion to withdraw Mr. Villalona's guilty plea before the court accepted the plea. The district court ultimately denied the § 2255 motion after holding an evidentiary hearing, and this Court denied Mr. Villalona a COA as to the denial of his § 2255 motion.

Mr. Villalona subsequently filed a Fed. R. Civ. P. 60(b)(4) and (6) motion, arguing that (1) the district court had failed to apply the correct ineffective-assistance-of-counsel standard; (2) the district court had failed to establish "the manner in which the evidence and arguments would be presented" during the evidentiary hearing; and (3) the district court wrongly had denied

his request to present arguments during the evidentiary hearing. The district court denied the Rule 60(b)(4) and (6) motion and denied Mr. Villalona a certificate of appealability ("COA"). In a later order, the district court denied Mr. Villalona leave to proceed *in forma pauperis* ("IFP") on appeal. Mr. Villalona has appealed and now moves this Court for a COA and IFP status on appeal.

A COA is required to appeal from the denial of a Fed. R. Civ. P. 60(b) motion arising from a § 2255 proceeding. *Jackson v. Crosby*, 437 F.3d 1290, 1294 (11th Cir. 2005). To obtain a COA, a movant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where the district court has denied a motion on the merits, the petitioner must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Under Rule 60(b)(4), a judgment is void "if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law." *Burke v. Smith*, 252 F.3d 1260, 1263 (11th Cir. 2001). A judgment is also void "if the rendering court was powerless to enter it." *Id.* Relief from "judgment under Rule 60(b)(6) is an extraordinary remedy." *Booker v. Singletary,* 90 F.3d 440, 442 (11th Cir.1996). Consequently, relief under Rule 60(b)(6) requires showing "extraordinary circumstances justifying the reopening of a final judgment." *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005) (internal quotation omitted).

Here, reasonable jurists would not debate that the district court's denial of Mr. Villalona's Rule 60(b)(4) and (6) motion. First, the district court had proper jurisdiction over Mr. Villalona's § 2255 proceedings and had the power to deny the motion, as it was the same court that imposed his sentence. *See Burke*, 252 F.3d at 1263; 28 U.S.C. § 2255(a) (stating that a prisoner may file a § 2255 motion in the same court that imposed the sentence). Furthermore, Mr. Villalona has not alleged that the district court "acted in a manner inconsistent with due process of law," and he

admitted that the court allowed him to testify and give arguments during the evidentiary hearing. *See Burke*, 252 F.3d at 1263.

Second, the district court correctly concluded that Mr. Villalona failed to allege extraordinary circumstances that warranted relief under Rule 60(b)(6). *See Gonzalez,* 545 U.S. at 535; *Booker*, 90 F.3d at 442. The district court listened to testimony and arguments from both Mr. Villalona and his counsel during the evidentiary hearing and determined that counsel's testimony that Mr. Villalona had never instructed him to file a motion to withdraw the guilty plea was more credible than Mr. Villalona's testimony that he had given counsel such an instruction. Mr. Villalona has failed to show by clear and convincing evidence that this credibility determination by the district court was wrong. *See Nejad v. Ga. Att'y Gen.*, 830 F.3d 1280, 1292 (11th Cir. 2016) (concluding that, when "the trial court was presented with squarely conflicting testimony on [a] critical factual dispute," this Court was "powerless to revisit [the trial court's credibility determination] on federal habeas review," absent "clear and convincing evidence in the record to rebut this credibility judgment"). Consequently, the district court applied the appropriate ineffective-assistance-of-counsel standard when it denied the § 2255 motion, as counsel's performance was not deficient because he was never instructed to file a motion to withdraw the guilty plea. *See Strickland v. Washington*, 466 U.S. 668, 687-89 (1984) (stating that, in order to demonstrate ineffective assistance of counsel, a defendant must show that counsel's deficient actions were below the wide range of competence demanded of attorneys in criminal cases).

Accordingly, Mr. Villalona's COA motion is DENIED. His IFP motion is DENIED AS MOOT.

/s/ Jill Pryor
UNITED STATES CIRCUIT JUDGE

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

STEVEN JUSTIN VILLALONA,

Petitioner,

v.

Case No: 6:14-cv-162-Orl-40TBS
(6:11-cr-375-Orl-40TBS)

UNITED STATES OF AMERICA,

Respondent.

_____/

ORDER

This cause is before the Court on Petitioner's Motion to Recuse Judge Byron (Doc. 79) and Motion for Relief From Final Judgment (Doc. 80).

Following an evidentiary hearing, the Court entered an Order on August 24, 2018, denying Petitioner's Motion to Vacate, Set Aside, or Correct Sentence ("Motion to Vacate," Doc. 1) and dismissing the case with prejudice. Petitioner appealed, and, on February 27, 2019, the Eleventh Circuit Court of Appeal denied Petitioner's request for a certificate of appealability. (Doc. 76). On November 12, 2019, the Supreme Court of the United States denied his petition for a writ of certiorari. (Doc. 78).

I. ANALYSIS

A. Motion to Recuse Judge Byron

The Court must consider its responsibility under 28 U.S.C. section 455 to view all of the circumstances in this case to determine whether recusal is appropriate.[1] After consideration of this matter, the Court can find no basis to warrant a recusal under section 455.

"[T]he standard for determining whether a judge should disqualify himself [or herself] under § 455 is an objective one, whether a reasonable person knowing all the facts would conclude that the judge's impartiality might be questioned." *United States v. Greenough*, 782 F.2d 1556, 1559 (11th Cir. 1986). "Ordinarily, a judge's rulings in the same or a related case may not serve as the basis for a recusal motion. The judge's bias must be personal and extrajudicial; it must derive from something other than that which the judge learned by participating in the case." *McWhorter v. City of Birmingham*, 906 F.2d 674, 678 (11th Cir. 1990) (citations omitted).[2]

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[1] The criterion for recusal under 28 U.S.C. § 455 states in part:

> (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b)(1) He shall also disqualify himself . . . [w]here he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.

28 U.S.C. § 455(a), (b)(1).

[2] Only personal bias, not judicial bias, is sufficient to justify recusal of a judge. *Jaffree v. Wallace*, 837 F.2d 1461, 1465 (11th Cir. 1988). Moreover, the bias must "'stem from

In this case, Petitioner's allegations of bias essentially stem merely from rulings and remarks made by the Court at the evidentiary hearing. However, Petitioner has failed to demonstrate bias whatsoever toward him. The mere fact that the Court ruled in a manner that is in some manner adverse to Petitioner does not establish personal bias or prejudice. *See United States v. Cohen*, 644 F. Supp. 113 (E.D. Mich. 1986). The statements of the Court at the evidentiary hearing identified were not extrajudicial in nature, were not of such a character that a reasonable person knowing all the facts would conclude that the Court's impartiality might reasonably be questioned, and did not in any manner indicate that the Court was incapable of rendering a fair judgment.

The Court is unable to find any basis to support a recusal in this case. Petitioner has merely provided the Court with vague and conclusory allegations, which are unsupported. Petitioner's unsubstantiated suggestions of personal bias or prejudice do not require recusal in the present case, and the motion is denied.

B. Motion for Relief From Final Judgment

Petitioner seeks relief under Federal Rules of Civil Procedure 60(b)(4) and (6). He argues that, at the evidentiary hearing, the Court failed to set forth "the manner in which

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personal, extrajudicial sources' unless 'pervasive bias and prejudice is shown by otherwise judicial conduct.' " *First Alabama Bank of Montgomery, N.A. v. Parsons Steel, Inc.*, 825 F.2d 1475, 1487 (11th Cir. 1987) (citation omitted). Petitioner has failed to present any evidence of a personal, pervasive bias or prejudice demonstrated by the Court. *See Loranger v. Stierheim*, 10 F.3d 776, 780 (11th Cir. 1994) ("[A]s a general rule, a judge's rulings in the same case are not valid grounds for recusal.").

the evidence and arguments would be presented . . . ." (Doc. 80 at 7). In particular, Petitioner alleges that, at the evidentiary hearing, the Court did not allow him to present argument in support of his claims. (*Id.*).

Petitioner brings this motion under Federal Rule of Civil Procedure 60(b)(4) and 60(b)(6).[1] Under Rule 60(b)(4), a party can move a court to set aside a judgment that is "void." However, Petitioner does not raise any arguments that could support a finding that the order dismissing his case was void. In fact, Petitioner essentially attacks the validity of his underlying criminal judgment, and the appropriate vehicle for these claims is a section 2255 motion; however, Petitioner is barred from bringing a second habeas petition because he has not complied with the procedural requirements for doing so.

In addition, relief under Rule 60(b)(6) is an extraordinary remedy and requires a showing of extraordinary circumstances. *Gonzalez v. Crosby*, 545 U.S. 524, 536 (2005). Here, Petitioner has failed to provide support for the relief requested, and he has not shown any extraordinary circumstances that would warrant reconsideration of the order of dismissal or would otherwise warrant relief under Rule 60(b)(6). In short, nothing presented by Petitioner in the instant motion, whether under Rule 60(b)(4) or Rule

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[1]Rule 60 permits a district court to relieve a party from a final order or judgment on grounds including but not limited to (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or (6) any other reason that justifies relief.

60(b)(6), persuades the Court that the dismissal of the petition was erroneous. As a result, the instant motion is denied.

Further, because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is denied with regard to the denial of this motion.

II. CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. Petitioner's Motion to Recuse Judge Byron (Doc. 79) is **DENIED**.

2. Petitioner's Motion for Relief From Final Judgment (Doc. 80) is **DENIED**.

DONE and **ORDERED** in Orlando, Florida on February 6, 2020.

PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10710-H

STEVEN JUSTIN VILLALONA,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

Before: MARTIN and JILL PRYOR, Circuit Judges.

BY THE COURT:

Steven Justin Villalona has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of the August 3, 2020, order denying a certificate of appealability and leave to proceed on appeal *in forma pauperis* in his appeal from the denial of his underlying motion to vacate sentence, 28 U.S.C. § 2255. Upon review, Mr. Villalona's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.