

MANDATE

S.D.N.Y. - N.Y.C.
12-cv-1954
Sullivan, 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 7th day of May, two thousand twenty.

Present:

Pierre N. Leval,
Raymond J. Lohier, Jr.,
Joseph F. Bianco,
Circuit Judges.

Lenroy McLean,

Petitioner-Appellant,

v.

19-4201

United States of America,

Respondent-Appellee.

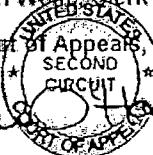
Appellant, pro se, moves for a certificate of appealability and in forma pauperis status. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because Appellant has failed to show that "(1) jurists of reason would find it debatable whether the district 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

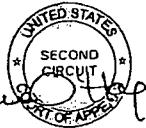
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Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit



Catherine O'Hagan Wolfe



Catherine O'Hagan Wolfe

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 30th day of June, two thousand twenty,

Present: Pierre N. Leval,
 Raymond J. Lohier, Jr.,
 Joseph F. Bianco,

Circuit Judges.

Lenroy McLean,
Petitioner - Appellant,

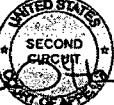
ORDER
Docket No. 19-4201

v.
United States of America,
Respondent - Appellee.

Appellant, Lenroy McLean, filed a motion for reconsideration and the panel that determined the motion has considered the request.

IT IS HEREBY ORDERED, that the motion is denied.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

Catherine O'Hagan Wolfe


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LENROY McLEAN,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: 401
DATE FILED: 11/5/19

No. 12-cv-1954 (RJS)
No. 08-cr-789 (RJS)
ORDER

RICHARD J. SULLIVAN, Circuit Judge:

On July 13, 2016, the Court issued an order denying Petitioner Lenroy McLean's petition for a writ of habeas corpus under 28 U.S.C. § 2255. (Doc. No. 5.)¹ On April 22, 2018, Petitioner sent a "notice of fraud on the court" to the Court, requesting that the Court issue a show cause order against the government to explain an allegedly fraudulent document. (Doc. No. 38.) The Court issued an order denying Petitioner's request on May 8, 2018, finding that his allegation of fraud on the Court had no basis. (Doc. No. 41.) Now before the Court is Petitioner's October 16, 2019 *pro se* letter motion requesting that the Court vacate that May 8, 2018 order and reopen Petitioner's Federal Rule of Civil Procedure 60 proceedings. For the following reasons, Petitioner's motion is DENIED.

A motion for relief under Rule 60(b) must be made "no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1). Although the Court denied Petitioner's show cause request on May 8, 2018, he waited more than one year to submit this motion on October 16, 2019. Therefore, Petitioner's motion is untimely.

Petitioner nevertheless maintains that the Court may equitably toll the one-year limitation period because he has demonstrated "extraordinary circumstances" that "prevented him from filing his petition

¹ All citations to the docket refer to the docket in the civil case, No. 12-cv-1954.

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on time" and that he "acted with reasonable diligence throughout the period he seeks to toll." *Baldayaque v. United States*, 338 F.3d 145, 150 (2d Cir. 2003) (quoting *Hizbullahhankhamon v. Walker*, 255 F.3d 65, 75 (2d Cir. 2001)). Specifically, he contends that he was "illegally apprehended and placed into an administrative segregation" from January 31, 2019 to June 26, 2019 without "access to the law library [and] his confiscated legal materials," thereby preventing him from timely filing this motion. But even taking Petitioner's allegations as true, and even assuming that equitable tolling is appropriate for the entire time that Petitioner was in administrative segregation, Petitioner still waited more than a year to submit this motion, since the time that elapsed before he was placed in segregation (May 8, 2018 to January 31, 2019), coupled with the time that elapsed after his release from segregation (June 26, 2019 to October 16, 2019), exceeds 365 days.

To the extent that Petitioner again seeks relief under Rule 60(d)(3), to "set aside a judgment for fraud on the court," that motion is also DENIED. The Court finds no basis for Petitioner's renewed allegation of fraud on the Court, which is based on the assertion that the attorney declaration submitted by Petitioner's trial counsel in response to his allegations of ineffective assistance of counsel was a forgery. That contention – premised on alleged discrepancies in signature styles on documents signed over the span of thirteen years – is entirely speculative and does not support an inference of fraud on the Court.

Accordingly, IT IS HEREBY ORDERED THAT Petitioner's motion is DENIED. Furthermore, the Court finds pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore Petitioner may not proceed *in forma pauperis* for the purpose of an appeal. See *Coppedge v. United States*, 369 U.S. 438, 445 (1962).

The Clerk of the Court is respectfully directed to mail a copy of this order to Petitioner and to terminate the motions pending at docket number 399 in No. 08-cr-789 and docket number 46 in No. 12-cv-1954.

SO ORDERED.

Dated: November 5, 2019
New York, New York



RICHARD J. SULLIVAN
UNITED STATES CIRCUIT JUDGE
Sitting by Designation

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 30th day of June, two thousand twenty,

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Lenroy McLean,

Petitioner - Appellant,

ORDER
Docket No. 19-4201

v.

United States of America,

Respondent - Appellee.

Appellant, Lenroy McLean, filed a motion for reconsideration and the panel that determined the motion has considered the request.

IT IS HEREBY ORDERED, that the motion is denied.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court


Catherine O'Hagan Wolfe

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