Appendix A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID ANGEL SIFUENTES,

Petitioner,

v.

JOHN PRELESNIK,

Respondent.
_____/

Case No. 1:03-cv-637

Honorable Paul L. Maloney

ORDER

This is a habeas corpus action brought by a state prisoner under 28 U.S.C. § 2254. On September 27, 2003, Petitioner filed his petition challenging his November 9, 2009, Midland County Circuit Court conviction and sentence for third-degree criminal sexual conduct (CSC-III) and for furnishing alcohol to a minor. The Court entered judgment denying the petition on August 11, 2006. By order entered January 28, 2008, the Sixth Circuit Court of Appeals affirmed the judgment. On December 1, 2008, the United States Supreme Court denied Petitioner's petition for writ of certiorari. The Supreme Court's denial of certiorari was not as final as it appeared to be. By virtue of a series of motions for reconsideration and motions for relief from judgment, Petitioner has kept this litigation active for another 12 years, even though he was released on parole on Mary 26, 2009, and subsequently discharged from parole.

Eleven years ago, I described Petitioner's efforts as Sisyphean. (Op. & Order, ECF No. 98, PageID.1100.) As the years have passed, however, it is the Court that has been required to roll the rock up the hill, again and again and again. On December 16, 2020, Petitioner filed yet another motion to reopen his case (ECF No. 135), effectively his eighth motion for reconsideration

in just the last two years (ECF Nos. 100, 103, 105, 107, 110, 122, and 132). Where such motions raise substantive claims, the appropriate disposition is a transfer of the case to the Sixth Circuit Court of Appeals pursuant to 28 U.S.C. § 1631. *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997). Therefore, the Court has transferred these motions, individually or in batches, to the Sixth Circuit Court of Appeals as second or successive petitions. That court routinely denies Petitioner permission to file the petitions.

But the time has long passed for Petitioner to file a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e) (28 days after the entry of judgment). Similarly, the time has passed for Petitioner to file a motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(1), (2), or (3) (one year after entry of judgment). Motions for relief from judgment under Federal Rule of Civil Procedure 60(b)(4), (5), or (6) must be filed "within a reasonable time." Fed. R. Civ. P. 60(c)(1).

There are no hard and fast rules with regard to the outside limit of "a reasonable time," but the Sixth Circuit Court of Appeals has concluded that "[j]urists of reason could not debate whether the motion was filed within a reasonable time [where] more than seven years had passed since the district court entered its judgment . . . ." *Futo v. Eppinger*, No. 18-4133, 2019 WL 6124855, at *1 (6th Cir. Mar. 8, 2019); *see also Cobas v. Lindsey*, No. 18-1320, 2018 WL 4510121 (6th Cir. Jul. 13, 2018) (fifteen years after judgment was too late); *Tyler v. Anderson*, 749 F.3d 499, 510 (6th Cir. 2014) (ten years after judgment was too late). Almost fifteen years have passed since Petitioner's judgment was issued. The Court has been unable to locate any authority even suggesting that such a delay would be "within a reasonable time" under these circumstances.

Petitioner's motions for reconsideration are not only hopelessly tardy, but also needlessly repetitive. For example, Petitioner filed one such motion for relief from judgment on

April 20, 2020 (ECF No. 122). The Court transferred the motion to the Sixth Circuit on June 5, 2020 (ECF No. 126). The Sixth Circuit denied Petitioner leave to pursue the second or successive petition on October 29, 2020 (ECF No. 128.) Petitioner waited only two weeks before filing the next one on November 16, 2020. (ECF No. 132.) The Court transferred the motion to the Sixth Circuit Court of Appeals by order entered December 9, 2020 (ECF No. 134). This time, Petitioner did not even wait for a decision. A week later, he filed the instant motion to reopen case. (ECF No. 135.) There is no meaningful difference between the motion Petitioner filed on November 16, 2020, and the one he filed on December 16.

There is no justification for Petitioner's December 16 motion. It would be pointless to send the same petition to Sixth Circuit a second time. Because Petitioner's new motion seeks the same relief as the motion already pending in the Sixth Circuit Court of Appeals, it is duplicative.

Plaintiffs generally have "no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendants." *Walton v. Eaton Corp.*, 563 F.2d 66, 70 (3d Cir. 1977). Accordingly, as part of its inherent power to administer its docket, a district court may dismiss a suit that is duplicative of another federal court suit. *See Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976); *Adams v. California Dep't of Health Serv.*, 487 F.3d 684, 688 (9th Cir. 2007); *Missouri v. Prudential Health Care Plan, Inc.*, 259 F.3d 949, 953-54 (8th Cir. 2001); *Curtis v. Citibank, N.A.*, 226 F.3d 133, 138-39 (2d Cir. 2000); *Smith v. SEC*, 129 F.3d 356, 361 (6th Cir. 1997). The power to dismiss a duplicative lawsuit is meant to foster judicial economy and the "comprehensive disposition of litigation," *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183 (1952), and protect

parties from "the vexation of concurrent litigation over the same subject matter." *Adam v. Jacobs*, 950 F.2d 89, 93 (2d Cir. 1991).

A complaint is duplicative and subject to dismissal if the claims, parties and available relief do not significantly differ from an earlier-filed action. *See Serlin v. Arthur Andersen & Co.*, 3 F.3d 221, 223 (7th Cir. 1993). Although complaints may not "significantly differ," they need not be identical. Courts focus on the substance of the complaint. *See, e.g. Bailey*, 846 F.2d at 1021 (holding that a complaint was duplicative although different defendants were named because it "repeat[ed] the same factual allegations" asserted in the earlier case). Considering the substantial identity between the legal claims, factual allegations, temporal circumstances and relief sought in Petitioner's December 16 motion for reconsideration, which is in effect a successive petition, and his November 16 motion for reconsideration, which is also a successive petition and remains pending in the Sixth Circuit, the December 16 motion is duplicative. Therefore, pursuant to the Court's inherent power, the motion will be denied on the grounds that it is duplicative and, therefore, frivolous.

Petitioner's frivolous motion is merely the most recent example of the larger problem: Petitioner's litigation tactics are abusive. They may not continue. Accordingly,

IT IS HEREBY ORDERED that Petitioner's motion to reopen his case (ECF No. 135) is **DENIED** as tardy, duplicative, and frivolous.

IT IS FURTHER ORDERED that the Clerk shall reject any further filings by Petitioner in this case.

Dated: February 17, 2021

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

Appendix B

No. 21-1201

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DAVID ANGEL SIFUENTES,

Petitioner-Appellant,

v.

JOHN PRELESNIK, Warden,

Respondent-Appellee.

FILED
Jul 12, 2021
DEBORAH S. HUNT, Clerk

ORDER

Before: NALBANDIAN, Circuit Judge.

Pro se litigant David Angel Sifuentes, a former Michigan prisoner, applies for a certificate of appealability ("COA") in his appeal from the district court's denial of his post-judgment motion in his habeas proceeding under 28 U.S.C. § 2254. *See* 28 U.S.C. § 2253(c)(1)(A). Sifuentes also moves to proceed in forma pauperis and to submit supplemental briefing.

In 2000, a Michigan jury convicted Sifuentes of two offenses: third-degree criminal sexual conduct involving the use of force; and furnishing alcohol to a minor. The trial court sentenced him to five to fifteen years of imprisonment on the criminal-sexual-conduct conviction and thirty-one days on the furnishing-alcohol conviction. His direct appeal was unsuccessful. *People v. Sifuentes*, No. 232286, 2002 WL 31474446 (Mich. Ct. App. Nov. 5, 2002) (per curiam), *perm. app. denied*, 662 N.W.2d 755 (Mich. 2003).

Sifuentes then filed a § 2254 petition, which the district court denied, *Sifuentes v. Prelesnik*, No. 1:03-CV-637, 2006 WL 2347529 (W.D. Mich. Aug. 11, 2006), and this court affirmed that decision. In 2011, this court also denied his motion for authorization to file a second or successive § 2254 petition. In 2019 and 2020, Sifuentes filed multiple post-judgment motions in his § 2254 case, all of them without success. In dismissing Sifuentes's latest motion for authorization to file a second or successive petition, this court warned him that "future duplicative or frivolous filings in this case may result in sanctions." *In re Sifuentes*, No. 20-2212 (6th Cir. June 7, 2021) (order).

The district court has noted that Sifuentes was released on parole in 2009 and has since been discharged from parole.

In December 2020, Sifuentes moved to reopen his § 2254 petition under Federal Rule of Civil Procedure 60(b). He sought to raise claims that he has presented before, alleging that: (1) the prosecutor committed misconduct during closing arguments; and (2) his trial and appellate counsel were ineffective for failing to object to or raise a claim about the misconduct.

The district court—after recounting Sifuentes's repetitive motion practice in his habeas case, which included eight motions for reconsideration in the last two years—held that his Rule 60(b) motion was untimely. But the district court also held that his motion was duplicative of several of his previous filings, finding that there was "no meaningful difference between" his current motion and an amended petition that he filed a month before. Therefore, the district court denied Sifuentes's motion "as tardy, duplicative, and frivolous" and ordered the Clerk to "reject any further filings by [Sifuentes] in this case."

Sifuentes filed a notice of appeal in which he sought to appeal not only the district court's denial of his Rule 60(b) motion but also a prior order. This court dismissed his appeal to the extent it concerned that prior order, because his appeal of that order was untimely. In his COA application, Sifuentes seeks a COA on each of his claims and argues that he is not engaging in abusive litigation tactics. In his supplemental brief, he argues that the district court erred by barring him from filing documents in his habeas case.

"[T]his court will not entertain an appeal from the denial of a Rule 60(b) motion in a [§ 2254] proceeding unless the petitioner first obtains a COA." *Johnson v. Bell*, 605 F.3d 333, 339 (6th Cir. 2010). A court may issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "That standard is met when 'reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner,'" *Welch v. United States*, 136 S. Ct. 1257, 1263 (2016) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Under Rule 60(b)(1) and (2), and (3), a movant may receive relief from judgment based on mistake, inadvertence, surprise, or excusable neglect; or newly discovered evidence. But a motion under those subsections must be filed within one year after the entry of judgment, Fed. R. Civ.

P. 60(c)(1); *Hill v. Mitchell*, 842 F.3d 910, 921-22 (6th Cir. 2016), and Sifuentes's motion was not, so he could not succeed under any of those provisions.

Rule 60(b)(4) and (5) provide relief if the judgment is void; it has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable. Subsection (6) is the catch-all provision, which permits courts to grant a motion for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). Motions under those provisions "must be made within a reasonable time." Fed. R. Civ. P. 60(c)(1). The reasonableness analysis "is a fact-specific determination," in which the court considers "a petitioner's diligence in seeking relief." *Miller v. Mays*, 879 F.3d 691, 699 (6th Cir. 2018). The "moving party must articulate a reasonable basis for delay." *Tyler v. Anderson*, 749 F.3d 499, 510 (6th Cir. 2014).

Sifuentes's motion came almost fifteen years after the judgment in his habeas case, and the district court noted that it was "unable to locate any authority even suggesting that such a delay would be 'within a reasonable time' under the circumstances." In his COA application, Sifuentes asserts that he "was pursuing all of his federal claims with due diligence in both federal and in state court from 2009-2020." Yet, as indicated above, Sifuentes has been filing post-judgment motions in his § 2254 proceedings for years, and the claims that he raised in this particular motion involved matters that were readily knowable to him at the time of his trial or direct appeal. Sifuentes also argues that he tried to raise the claim in 2006 or 2007 in a motion to remand and therefore that his current motion should be deemed to relate back. But, to the extent that Sifuentes in fact presented these claims there, the district court denied that motion, and Sifuentes offers no compelling argument why he should be permitted to raise his claims again nearly fifteen years later.

That consideration also goes to the district court's other rationale for denying Sifuentes's motion: it is duplicative. The district court noted that Sifuentes had filed a post-judgment motion in his habeas case one month before this one, and that he filed this one merely a week after the court had transferred his prior motion to this court as second or successive. The two motions, the district court observed, have "no meaningful difference." The court therefore denied the motion

as frivolous and duplicative, in addition to being untimely. No reasonable jurist could debate that decision.

The frivolousness of Sifuentes's motion, together with his filing history in his § 2254 case, also prompted the district court to impose a filing restriction directing the Clerk not to accept any future filings from Sifuentes in his habeas case. A district court has inherent authority to control vexatious litigants. *See Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 269 (6th Cir. 1998). Because Sifuentes has continued to press the same claims over and again despite both this court's and the district court's repeated rejection of them, no reasonable jurist could debate that the district court's filing restriction is not an abuse of discretion. *See id.*

Accordingly, Sifuentes's motion to file a supplemental brief is **GRANTED**, his COA application is **DENIED**, and his motion to proceed in forma pauperis is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix C

No. 21-1201

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 04, 2021
DEBORAH S. HUNT, Clerk

DAVID ANGEL SIFUENTES,

Petitioner-Appellant,

v.

JOHN PRELESNIK, WARDEN,

Respondent-Appellee.

ORDER

Before: BATCHELDER, GIBBONS, and DONALD, Circuit Judges.

David Angel Sifuentes, a pro se former Michigan prisoner, petitions the court to rehear en banc its order denying him a certificate of appealability. The petition has been referred to this panel, on which the original deciding judge does not sit, for an initial determination on the merits of the petition for rehearing. Upon careful consideration, the panel concludes that the original deciding judge did not misapprehend or overlook any point of law or fact in issuing the order and, accordingly, declines to rehear the matter. Fed. R. App. P. 40(a).

The Clerk shall now refer the matter to all of the active members of the court for further proceedings on the suggestion for en banc rehearing.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Appendix D

No. 21-1201

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 19, 2021
DEBORAH S. HUNT, Clerk

DAVID ANGEL SIFUENTES,

Petitioner-Appellant,

v.

JOHN PRELESNIK, WARDEN,

Respondent-Appellee.

ORDER

Before: BATCHELDER, GIBBONS, and DONALD, Circuit Judges.

David Angel Sifuentes, petitions for rehearing en banc of this court's order entered on July 12, 2021, denying his application for a certificate of appealability. The petition was initially referred to this panel, on which the original deciding judge does not sit. After review of the petition, this panel issued an order announcing its conclusion that the original application was properly denied. The petition was then circulated to all active members of the court, none of whom requested a vote on the suggestion for an en banc rehearing. Pursuant to established court procedures, the panel now denies the petition for rehearing en banc.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk