

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

August 12, 2021

Clerk - Southern District of Florida
U.S. District Court
400 N MIAMI AVE
MIAMI, FL 33128-1810

Appeal Number: 21-10935-C
Case Style: James Webb v. USA
District Court Docket No: 1:20-cv-21522-KMM

The enclosed copy of this Court's Order of Dismissal is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

All pending motions are now rendered moot in light of the attached order.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Walter Pollard, C/csg.
Phone #: (404) 335-6186

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-10935-C

JAMES T. WEBB,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

Before: WILSON, MARTIN, and LUCK, Circuit Judges.

BY THE COURT:

James Webb, a federal prisoner proceeding pro se,¹ appeals the district court's dismissal of his 28 U.S.C. § 2241 petition for lack of jurisdiction, and its denial of his fourth Fed. R. Civ. P. 59(e) motion and "Motion to Correct Docket." Mr. Webb now moves this Court for leave to proceed on appeal in forma pauperis ("IFP").

¹ Webb presently is confined at Federal Medical Center in Butner, North Carolina.

I.

Webb is serving a 327-month sentence after pleading guilty, in the Eastern District of North Carolina, to conspiracy to commit bank and wire fraud. He filed the present § 2241 petition in the Southern District of Florida, claiming that he was wrongfully subjected to criminal prosecution in the Eastern District of North Carolina, because that case utilized evidence from a Securities and Exchange Commission (“SEC”) civil enforcement action against him in the Southern District of Florida.²

A Magistrate Judge issued a report and recommendation (“R&R”), recommending that the district court dismiss Webb’s case for lack of jurisdiction, because he was in federal custody pursuant to a judgment from the Eastern District of North Carolina and thus was required to file his habeas petition in that court. Webb objected, asserting that the Southern District of Florida had jurisdiction because that court issued an Order Freezing Assets and Granting Other Emergency Relief in his SEC action, which stated that “the [c]ourt shall retain jurisdiction over this matter for all purposes.”

The district court adopted the R&R and dismissed Webb’s § 2241 petition for lack of jurisdiction. According to the district court, it “defied logic to read the language [that Webb] relied[d] on as this [c]ourt’s assertion of jurisdiction over any

² The SEC action resulted in a judgment against Webb, and the case was closed in 2009.

future criminal actions, brought in any federal district in the country, simply because it arose out of the same nucleus of fact as the [SEC action].”

Webb then filed a Fed. R. Civ. P. 59(e) motion to alter or amend judgment, requesting that the court grant an “anti-suit injunction against” the Eastern District of North Carolina, as well as his “immediate release from federal prison.” He asserted that the court did, in fact, have jurisdiction over his § 2241 petition based on his various connections to Florida, and reasserted that his criminal prosecution was illegal and thus required a merits determination of his petition. Webb then filed a “Motion to Correct Docket,” and for miscellaneous relief, stating that the docket incorrectly showed that this case was “closed,” arguing that the government’s failure to respond in this action was a concession to the merits of his claim, and requesting immediate release from federal custody because of the COVID-19 pandemic.

The Magistrate Judge issued a second R&R, recommending the court deny Webb’s motions because, again, Webb was required to challenge a judgment or sentence imposed by the Eastern District of North Carolina in that court. The district court adopted the R&R. Webb filed a notice of appeal, and moved the district court for IFP, which the court denied without prejudice.

II.

This Court may grant a petitioner leave to proceed IFP if he "show[s] inability to pay or give security for fees and costs." 16AA Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3970.1 (4th ed. Apr. 2020 update); see 28 U.S.C. § 1915(a)(1). Webb's affidavit of indigency satisfies this requirement. As a result, he need not prepay fees and costs associated with this appeal.

Nevertheless, we conclude his appeal is frivolous. See 28 U.S.C. § 1915(e)(2)(b) (stating that "the court shall dismiss the case at any time if the court determines" the appeal is frivolous (emphasis added)). "[A]n action is frivolous if it is without arguable merit either in law or fact." Napier v. Preslicka, 314 F.3d 528, 531 (11th Cir. 2002) (quotation marks omitted), overruled on other grounds by Hoever v. Marks, 993 F.3d 1353 (11th Cir. 2021).

Because Webb is currently incarcerated in North Carolina for a judgment entered by the Eastern District of North Carolina, he is required to file his § 2241 petition in a North Carolina court. See Hadjuk v. United States, 764 F.2d 795, 796 (11th Cir. 1985) (per curiam) ("A petition for a writ of habeas corpus may only be brought in the court having jurisdiction over the petitioner or his place of incarceration."). The district court in this case (located in the Southern District of Florida) therefore did not err in dismissing Webb's § 2241 petition for lack of jurisdiction. And Webb has not identified any legal authority for his proposition

that, because his criminal conviction shared common facts with his SEC action in the Southern District of Florida, the Southern District of Florida had jurisdiction to rule on a habeas petition challenging a criminal judgment entered by another district court.

Because the district court lacked jurisdiction, it also properly denied Webb's Rule 59(e) motion. See Arthur v. King, 500 F.3d 1335, 1343 (11th Cir. 2007) ("The only grounds for granting a Rule 59 motion are newly-discovered evidence or manifest errors of law or fact." (quotation marks omitted and alteration adopted)). And to the extent that he requested compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A), the court also lacked jurisdiction because, again, Webb was attempting to challenge his sentence in the incorrect district court.

Consequently, Mr. Webb's motion to proceed in forma pauperis is GRANTED and his appeal is DISMISSED as frivolous.

LUCK, Circuit Judge, concurring in part and dissenting in part:

I agree that James Webb's appeal is frivolous but, consistent with our precedent and the general practice in the federal courts, I would deny the motion for leave to proceed in forma pauperis as frivolous rather than grant it as the majority does. See 16AA Wright & Miller, Federal Practice & Procedure § 3970.1, at 140 (4th ed. 2008) ("To proceed on appeal in forma pauperis, a litigant must be economically eligible, and his appeal must not be frivolous The appellant's position on appeal need not be correct, it merely needs to be non-frivolous. But if all the issues are legally frivolous, IFP status will be denied." (footnotes and quotations omitted)); see also Rudolph v. Allen, 666 F.2d 519, 520 (11th Cir. 1982) ("Because the district court's order clearly is in accord with the decisions of this court, Rudolph's appeal is frivolous. Therefore, we deny his application to proceed in forma pauperis."); Morris v. Ross, 663 F.2d 1032, 1033 (11th Cir. 1981) ("We conclude that the appeal is frivolous within the meaning of Coppedge v. United States, 369 U.S. 438 (1962). The motion to proceed in forma pauperis will therefore be denied and the appeal dismissed."); Wade v. Bell, 591 F.2d 351, 351 (5th Cir. 1979) ("IT IS ORDERED that the petitioner's application for leave to appeal in forma pauperis is DENIED as frivolous.").

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-10935-C

JAMES T. WEBB,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

Before: WILSON, ROSENBAUM, and LUCK, Circuit Judges.

BY THE COURT:

James Webb has filed motions for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's August 12, 2021, order granting his motion for leave to proceed *in forma pauperis* and dismissing his appeal as frivolous. Upon review, Webb's motions for reconsideration are DENIED because he has offered no new evidence or arguments of merit to warrant relief.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:20-cv-21522-KMM

JAMES T. WEBB,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER ON REPORT AND RECOMMENDATION

THIS CAUSE came before the Court upon *pro se* Petitioner James T. Webb's ("Petitioner") self-styled Timely Rule 59[(e)] Motion in Compliance with Local Rules ("Rule 59(e) Motion") (ECF No. 15) and Motion to Correct Docket . . . and/or Motion for Other Miscellaneous Relief ("Motion to Correct Docket") (ECF No. 20). The Court referred the matter to the Honorable Lisette M. Reid, United States Magistrate Judge, who issued a Report and Recommendation recommending that both Motions be DENIED. ("R&R") (ECF No. 21). Petitioner filed Objections on February 22, 2021, which, while untimely, the Court gratuitously considers. (ECF Nos. 22, 23).¹ The matter is now ripe for review. As set forth below, the Court ADOPTS the Report and Recommendation.

The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The Court "must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). A *de novo* review is therefore required if a party files "a proper, specific objection" to a factual finding contained in the report. *Macort v. Prem*,

¹ The second filing (ECF No. 23) is duplicative of the first (ECF No. 22).

Inc., 208 F. App'x 781, 784 (11th Cir. 2006). “It is critical that the objection be sufficiently specific and not a general objection to the report” to warrant *de novo* review. *Id.*

Petitioner is presently confined at Butner Federal Medical Center in Butner, North Carolina. On April 9, 2020, Petitioner filed a self-styled Great Writ (“Petition”) regarding two different cases. *See* (ECF No. 1). The first case referenced was a civil enforcement action before the Southern District of Florida that was closed on August 10, 2009. R&R at 2. The second case referenced was a criminal prosecution before the Eastern District of North Carolina that concluded on January 15, 2014, resulting in Petitioner’s conviction and sentence. *Id.* On June 4, 2020, Magistrate Judge Reid entered a Report and Recommendation recommending that the Petition be denied. *See* (ECF No. 4). On June 25, 2020, the Court entered an Order adopting the Report and Recommendation, overruling Petitioner’s Objections, and denying the Petition because the sentence Petitioner challenged was imposed by the Eastern District of North Carolina. *See* (ECF No. 8). Petitioner filed several motions thereafter which were either stricken or denied for various reasons. *See* (ECF Nos. 9, 10, 11, 12, 13, 14). The Court granted Petitioner leave to file one renewed Rule 59(e) motion. *See* (ECF No. 14).

As set forth in the instant Report and Recommendation, Magistrate Judge Reid recommends that the Rule 59(e) Motion be denied because it does not present any new evidence or demonstrate that the Court made any manifest errors of law or fact. R&R at 3. Further, Magistrate Judge Reid recommends that the Motion to Correct Docket be denied because in that Motion Petitioner requests that the docket reflect this case as active, however this case is closed and should remain closed. *Id.* at 4–5. Finally, to the extent that Petitioner seeks to modify his sentence under 18 U.S.C. § 3582 in the Motion to Correct Docket, Magistrate Judge Reid recommends that it be denied because the Court does not have jurisdiction to consider any request by Petitioner for a modification of sentence. *Id.* at 5.

In his Objections, Petitioner attempts to relitigate issues the Court has already disposed of or that are wholly unrelated to the nature of Magistrate Judge Reid's factual findings. *See generally* (ECF Nos. 22, 23). For example, Petitioner continues to argue that the Court, in closing the civil enforcement action in 2009, retained jurisdiction over Petitioner for *all purposes*, thus foreclosing another jurisdiction from prosecuting him criminally for any conduct related thereto. *See* (ECF No. 23) at 4–5. The Court dismissed this argument as illogical in its initial Order Adopting Report and Recommendation. *See* (ECF No. 8). As another example, Petitioner objects to Magistrate Judge Reid's statement that "the only connection between Petitioner and the Southern District of Florida was the closed SEC civil enforcement action," citing the many ways he may otherwise generally be subject to personal jurisdiction in Florida. *See* (ECF No. 23) at 8–9. Petitioner offers no specific objections to the findings relevant to this matter, which are quite simply that (1) Petitioner's Rule 59(e) Motion presents no new evidence nor demonstrates that the Court made any manifest errors of law or fact; (2) this matter is and should remain closed; and (3) the Court does not have jurisdiction to consider a request to modify a sentence imposed in the Eastern District of North Carolina. *See generally* R&R. Accordingly, Petitioner's Objections are OVERRULED.

UPON CONSIDERATION of the Motions, the Report and Recommendation, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Magistrate Judge Reid's Report and Recommendation (ECF No. 21) is ADOPTED and Petitioner's Rule 59(e) Motion (ECF No. 15) and Motion to Correct Docket (ECF No. 20) are DENIED.

DONE AND ORDERED in Chambers at Miami, Florida, this 12th day of March, 2021.



K. MICHAEL MOORE
CHIEF UNITED STATES DISTRICT JUDGE

c: James T. Webb
13206056
Butner FMC
Federal Medical Center
Inmate Mail/Parcels
Post Office Box 1600
Butner, NC 27509
PRO SE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-21522-CV-MOORE
MAGISTRATE JUDGE REID

JAMES T. WEBB,

Petitioner,

v.

UNITED STATES,

Respondent.

REPORT OF MAGISTRATE JUDGE

THIS CAUSE is before the Court upon *pro se* Petitioner's self-styled "Timely Rule 59[(e)] Motion in Compliance with Local Rules" ("Rule 59(e) Motion") [ECF No. 15], filed pursuant to Fed. R. Civ. P. 59(e), and "Motion to Correct Docket . . . and or Motion for Other Miscellaneous Relief" ("Motion to Correct Docket") [ECF No. 20]. This case has been referred to the Undersigned for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters, pursuant to 28 U.S.C. § 636 and S.D. Fla. Admin. Order 2019-2. [ECF No. 2]. For the reasons set forth below, Petitioner's Rule 59(e) Motion [ECF No. 15] and Motion to Correct Docket [ECF No. 20] should be **DENIED**.

I. Procedural History

Petitioner, currently confined at Butner Federal Medical Center in Butner, North Carolina, formerly initiated this case by seeking a writ of *habeas corpus* ("petition"). [ECF No. 1 at 1].¹ Petitioner referenced two cases in his petition, a civil action in this District and a criminal

¹Citations to [ECF] refer to docket entries in this case, Case No. 20-21522-CV-MOORE. Citations to [CR-ECF] refer to docket entries in criminal Eastern District of North Carolina Case No. 5:12-00301-cr-D-1. Citations to [CV1-ECF] refer to docket entries in Case No. 07-61655-CV-Middlebrooks.

prosecution in the Eastern District of North Carolina. [*Id.*]. The former civil action referenced by Petitioner was a Securities and Exchange Commission (“SEC”) civil enforcement action which was closed on August 10, 2009. *See Order Closing Case, SEC v. Webb*, No. 07-61655-CV-Middlebrooks (S.D. Fla. August 10, 2009), [CV1-ECF No. 77]. The criminal prosecution concluded on January 15, 2014, when Petitioner was convicted and sentenced in the Eastern District of North Carolina. *See Judgment, United States v. Webb*, No. 5:12-cr-00301-D-1 (E.D.N.C. Jan. 15, 2014) [CV1-ECF No. 127].

Consequently, the Undersigned entered a Report and Recommendation (“R & R”), finding that the only connection between Petitioner and the Southern District of Florida was the closed SEC civil enforcement action, and that Petitioner’s attempt to seek a writ of *habeas corpus* in this District was misplaced. [ECF No. 4 at 2]. The Undersigned found that because Petitioner was in custody in Butner, North Carolina, pursuant to a judgment from the Eastern District of North Carolina, his petition for a writ of *habeas corpus* was improperly filed in this Court. [*Id.* at 2-3]. Finally, the Undersigned recommended that the case be dismissed for lack of jurisdiction. [*Id.* at 3].

On June 25, 2020, the Court adopted the R & R, and found, in summary, that Petitioner’s objections did not challenge any of the Undersigned’s factual findings, and the case was closed. [ECF No. 8 at 2]. On July 22, 2020, Petitioner filed a motion to alter or amend judgment [ECF No. 9], which was stricken for failure to comply with the local rules. [ECF No. 10]. Subsequently, Petitioner filed two duplicative motions to alter and amend judgment [ECF Nos. 11, 13], which were stricken [ECF No. 14], and a motion for reconsideration [ECF No. 12], which was denied [ECF No. 14]. The Court further ordered that because “Petitioner’s first Rule 59(e) Motion was timely filed, the Court [would] consider one renewed 59(e) motion as timely[,] if it complie[d]

with the Local Rules, including the twenty (20) page limit, and [was] filed on or before August 11, 2020. [ECF No. 14].

On August 10, 2020, Petitioner filed the instant Rule 59(e) Motion, which is twenty-three pages, with additional pages of attachments. [ECF No. 15]. Nevertheless, the Undersigned will consider the merits of Petitioner's Rule 59(e) Motion.

II. Discussion

1) Rule 59(e) Motion

A motion to alter or amend a civil judgment may be filed within twenty-eight days of entry of the judgment. *See Fed. R. Civ. P. 59(e)*. "The only grounds for granting a Rule 59(e) motion are newly discovered evidence or manifest error of law or fact." *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (quoting *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999)). "[A] Rule 59(e) motion [cannot be used] to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010) (quoting *Michael Linet, Inc. v. Village of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005)).

Here, Petitioner's Rule 59(e) Motion does not present any new evidence or demonstrate that the Court made any manifest errors of law or fact. In Petitioner's Rule 59(e) Motion, he requests that the Court grant an "anti-suit injunction against" the Eastern District of North Carolina in Case No. 5:12-cr-00301-D-1, and that the Court grant his "immediate release from federal prison." [ECF No. 15 at 23]. As the Court previously noted, a habeas petitioner challenging a federal court's sentence may only bring an action challenging that sentence in the district that imposed it. *See Partee v. Atty. Gen., Ga.*, 451 F. App'x 856, 858 (11th Cir. 2012); [ECF No. 8 at 3]. Accordingly, because Petitioner is in custody in Butner, North Carolina, pursuant to a judgment

from the Eastern District of North Carolina, his petition for a writ of *habeas corpus* is improperly filed in this Court, and was correctly denied [ECF No. 8].

Petitioner, also once again asserts that the “United States Attorneys within the Southern District of Florida [chose] the Southern District of Florida[,] not the Eastern District of North Carolina[.] as the *lex loci contractus* for this matter, and Federal Judge Middlebrooks retained jurisdiction over this ‘matter’ in the Southern District of Florida Federal District Court.” [ECF No. 15 at 19]. Here, Petitioner appears to refer to the Order Freezing Assets and Granting Other Emergency Relief, in Case No. 07-61655-CV-Middlebrooks, which states “the Court shall retain jurisdiction over this matter for all purposes.” [CV1-ECF No. 83]; [ECF No. 8 at 2]. As the Court noted in the Order Adopting, “it defies logic to read the language Petitioner relies on as this Court’s assertion of jurisdiction over any future criminal actions, brought in any federal district in the country, simply because it arose out of the same nucleus of fact as the *civil enforcement action* brought before this Court.” [ECF No. 8 at 3] (emphasis in original).

Simply stated, any *habeas petition* brought by Petitioner in this Court, which challenges his sentence imposed by the Eastern District of North Carolina or challenges his custody while outside the Southern District of Florida should be dismissed for lack of jurisdiction. Accordingly, for the reasons outlined above, Petitioner has provided no new evidence nor demonstrated that the Court made any manifest errors of law or fact, and Petitioner’s Rule 59(e) Motion [ECF No. 15] should be denied.

2) Motion to Correct Docket and Motion for Other Miscellaneous Relief

Petitioner has also filed a Motion to Correct Docket, requesting that the docket reflect this case as active. [ECF No. 20 at 3]. Because Petitioner’s Rule 59(e) Motion should be denied, this request should also be denied. Petitioner also indicates that he contracted COVID-19, and requests

immediate release. [ECF No. 20 at 4]. To the extent Petitioner is seeking to modify his sentence under 18 U.S.C. § 3582, “it follows that such a motion must be filed in the district court which imposed the sentence.” *Braswell v. Gallegos*, 82 F. App’x 633, 635 (10th Cir. 2003). Here, as indicated, the court that imposed Petitioner’s sentence is in the Eastern District of North Carolina, therefore, this Court does not have jurisdiction to consider any request by Petitioner for a modification of sentence. *See id.* The Motion to Correct Docket [ECF No. 20] should be denied.

Finally, Petitioner is cautioned that this case, Case No. 20-21522-CV-MOORE, was closed pursuant to the Order Adopting Report [ECF No. 8], and the Court will not consider any further filings in this case.

III. Recommendations

Based on the foregoing, it is **RECOMMENDED** that Petitioner’s Rule 59(e) Motion [ECF No. 15] and Motion to Correct Docket [ECF No. 20] be **DENIED**, and the case remain **CLOSED**.

A party shall serve and file written objections, if any, to this Report and Recommendation with the District Judge within **FOURTEEN DAYS** of being served with a copy of this Report and Recommendation. Failure to timely file objections will bar a *de novo* determination by the District Judge of anything in this recommendation and shall constitute a waiver of a party’s “right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions.” 11th Cir. R. 3-1 (2016); 28 U.S.C. § 636(b)(1)(C); *see also Harrigan v. Metro-Dade Police Dep’t Station #4*, 977 F.3d 1185, 1191-92 (11th Cir. 2020).

SIGNED this 4th day of February, 2021.



LISETTE M. REID
UNITED STATES MAGISTRATE JUDGE

cc: James T. Webb
13206056
Butner FMC
Federal Medical Center
Inmate Mail/Parcels
Post Office Box 1600
Butner, NC 27509
PRO SE

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