

United States Court of Appeals
for the Fifth Circuit

No. 20-61036

JOHN JOSEPH DEDEAUX,

Petitioner—Appellant,

versus

MARSHAL TURNER, SUPERINTENDENT,

Respondent—Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:18-CV-263

Before DENNIS, GRAVES, and COSTA, *Circuit Judges.*

PER CURIAM:

The motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

*Judge Leslie H. Southwick, did not participate in the consideration of the rehearing en banc.



Certified as a true copy and issued
as the mandate on Oct 08, 2021

Attest: *John W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

United States Court of Appeals for the Fifth Circuit

No. 20-61036



A True Copy
Certified order issued Sep 16, 2021

John W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

JOHN JOSEPH DEDEAUX,

Petitioner—Appellant,

versus

MARSHAL TURNER, *Superintendent,*

Respondent—Appellee.

Application for Certificate of Appealability from the
United States District Court for the Southern District of Mississippi
USDC No. 1:18-CV-263

ORDER:

John Joseph Dedeaux, Mississippi prisoner # 93417, moves for a certificate of appealability (COA) to appeal the district court's dismissal of his 28 U.S.C. § 2254 application challenging the state court's denial of his eligibility for parole. Dedeaux argues that the state court violated the Ex Post Facto Clause by applying Mississippi Code § 97-3-2 to determine that his prior burglary conviction used to enhance his current sentence was a crime of violence rendering him ineligible for parole consideration. He also argues that the state court erroneously applied state law by determining that the burglary conviction qualified as a crime of violence. Dedeaux asserts that he is not in custody on any conviction for burglary and that, therefore, the new

parole statute cannot be applied to him. He notes that other inmates have been granted parole eligibility and asserts a violation of his equal protection rights.

For the first time before this court, Dedeaux seeks declaratory relief to have it recognized that the state court violated the Ex Post Facto Clause. Dedeaux also asserts that Mississippi Code § 97-17-23 was retroactively applied to him and violated the Ex Post Facto Clause and his right to be charged by a grand jury and asks this court to apply the repeal of Mississippi Code § 97-17-19 retroactively and to find that he was never indicted for an existing crime. Because these claims were not raised in or addressed by the district court, this court declines to consider them. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018).

Dedeaux fails to brief any challenge to the district court's denial of his Federal Rule of Civil Procedure 59(e) motion and the finding that his claims of due process and equal protection violations, of a violation of the separation-of-powers doctrine, and that the Mississippi statutes were void for vagueness were not properly raised; those issues are waived. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

In order to obtain a COA, Dedeaux must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). Where the district court denies relief on the merits, an applicant must show that reasonable jurists "would find the district court's assessment of the constitutional claims debatable or wrong." *Slack*, 529 U.S. at 484. An applicant satisfies the COA standard "by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed

further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Dedeaux has not met this standard.

His motion for a COA is DENIED. The motion to supplement the record is DENIED.

/s/Gregg Costa
GREGG COSTA
United States Circuit Judge

United States Court of Appeals
for the Fifth Circuit



No. 20-61036

A True Copy
Certified order issued Sep 16, 2021

Steph W. Cayer
Clerk, U.S. Court of Appeals, Fifth Circuit

JOHN JOSEPH DEDEAUX,

Petitioner—Appellant,

versus

MARSHAL TURNER, *Superintendent,*

Respondent—Appellee.

Application for Certificate of Appealability from the
United States District Court for the Southern District of Mississippi
USDC No. 1:18-CV-263

ORDER:

John Joseph Dedeaux, Mississippi prisoner # 93417, moves for a certificate of appealability (COA) to appeal the district court's dismissal of his 28 U.S.C. § 2254 application challenging the state court's denial of his eligibility for parole. Dedeaux argues that the state court violated the Ex Post Facto Clause by applying Mississippi Code § 97-3-2 to determine that his prior burglary conviction used to enhance his current sentence was a crime of violence rendering him ineligible for parole consideration. He also argues that the state court erroneously applied state law by determining that the burglary conviction qualified as a crime of violence. Dedeaux asserts that he is not in custody on any conviction for burglary and that, therefore, the new

No. 20-61036

parole statute cannot be applied to him. He notes that other inmates have been granted parole eligibility and asserts a violation of his equal protection rights.

For the first time before this court, Dedeaux seeks declaratory relief to have it recognized that the state court violated the Ex Post Facto Clause. Dedeaux also asserts that Mississippi Code § 97-17-23 was retroactively applied to him and violated the Ex Post Facto Clause and his right to be charged by a grand jury and asks this court to apply the repeal of Mississippi Code § 97-17-19 retroactively and to find that he was never indicted for an existing crime. Because these claims were not raised in or addressed by the district court, this court declines to consider them. *See Black v. Davis*, 902 F.3d 541, 545 (5th Cir. 2018).

Dedeaux fails to brief any challenge to the district court's denial of his Federal Rule of Civil Procedure 59(e) motion and the finding that his claims of due process and equal protection violations, of a violation of the separation-of-powers doctrine, and that the Mississippi statutes were void for vagueness were not properly raised; those issues are waived. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

In order to obtain a COA, Dedeaux must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). Where the district court denies relief on the merits, an applicant must show that reasonable jurists “would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack*, 529 U.S. at 484. An applicant satisfies the COA standard “by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed

No. 20-61036

further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Dedeaux has not met this standard.

His motion for a COA is DENIED. The motion to supplement the record is DENIED.

/s/Gregg Costa
GREGG COSTA
United States Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JOHN JOSEPH DEDEAUX	§	PETITIONER
	§	
	§	
v.	§	Civil No. 1:18cv263-HSO-RHW
	§	
	§	
UNKNOWN TURNER	§	RESPONDENT

ORDER DENYING PETITIONER'S MOTION [30]
FOR REHEARING, AND DENYING AS MOOT PETITIONER'S
MOTION [32] FOR DISPOSITION AND STATUS

BEFORE THE COURT are Petitioner John Joseph Dedeaux's Motion [30] for Rehearing and Motion [32] for Disposition and Status, which are fully briefed. After due consideration of the Motions, related pleadings, the record, and relevant legal authority, the Court finds that Petitioner's Motion [30] for Rehearing is not well taken and should be denied, and that his Motion [30] for Disposition and Status is moot.

I. BACKGROUND

A. Factual Background

On or about March 3, 1994, Petitioner John Joseph Dedeaux ("Petitioner" or "Dedeaux") was found guilty by a jury in the Circuit Court of Hancock County, Mississippi (the "Circuit Court"), of the charge of transfer of a controlled substance as a habitual offender under Mississippi Code § 99-19-81. See R. [1-1] at 1. Petitioner was sentenced to a 30-year term of imprisonment in the custody of the Mississippi Department of Corrections ("MDOC"), without the benefit of probation,

Appendix B

parole, or any form of early release. *See id.* Petitioner had been previously convicted of burglary of a dwelling in 1989 and receiving stolen property in 1990. *See id.* at 11. The Circuit Court subsequently denied several requests by Petitioner for parole. *See id.*, *e.g.*, at 5 n.1, 10, 11-12.

B. Procedural history

Petitioner filed a Petition [1] in this Court under 28 U.S.C. § 2254, seeking a writ of habeas corpus regarding Mississippi's parole statutes. Pet. [1] at 1-14. Petitioner asserts that he "is being held in violation of Article I, Section 10 of the United States Constitution, which forbids the State of Mississippi to pass, or enact, any 'ex post facto' law." Resp. [12] at 1.

Respondent Unknown Turner ("Respondent") filed a Motion to Dismiss [15], arguing that Petitioner's claims should be dismissed with prejudice because his claim for parole eligibility fails to state a claim of constitutional magnitude and is precluded from habeas review pursuant to 28 U.S.C. § 2254. *See* Mot. [15] at 3-4. On November 14, 2019, the Magistrate Judge entered a Proposed Findings of Fact and Recommendation [22], recommending that the Petition be dismissed with prejudice. *See* R. & R. [22] at 6. Petitioner submitted Objections.

On March 9, 2020, the Court entered an Order [27] agreeing with the conclusions reached by the Magistrate Judge and adopting his Proposed Findings of Fact and Recommendation. *See* Order [27] at 10. The Court granted Respondent's Motion to Dismiss [15] and dismissed the Petition for Writ of Habeas Corpus [1] with prejudice. *See id.* at 11.

~~On March 25, 2020, Petitioner executed a Motion [30] for Rehearing, which~~

was received and filed of record in this case on April 6, 2020. Petitioner rehashes many of his arguments from his previous filings pertaining to the retroactivity of certain Mississippi statutes and whether the state court's adjudication of his request for parole resulted in a decision that was either contrary to clearly-established federal law, or involved an unreasonable application of clearly-established federal law. *See* Mot. [30] at 4-17. Petitioner also points to purportedly "similar inmates" who were granted parole by a circuit court judge. *See id.* at 18-19.

Respondent opposes Petitioner's Motion [30] for Rehearing, analyzing the request under Federal Rule of Civil Procedure 59(e). *See* Resp. [31] 1-6. Respondent argues that Petitioner simply disagrees with the Court's findings and that he is rearguing matters raised in previous filings, which have already been addressed by the Court. *See id.* at 4. To the extent Petitioner's Motion [30] could be construed as requesting an evidentiary hearing, Respondent contends that such a hearing is not warranted. *See id.* at 4-6.

Petitioner's Rebuttal [35] reurges his positions on the retroactivity and applicability of the Mississippi statutes regarding his eligibility for parole. *See* Rebuttal [35] at 2-13. Petitioner asks the Court to declare that "the State of Mississippi, through its Judiciary Branch of government (the Circuit Court of Hancock County) has enacted an ex post facto law by erroneously applying Miss. Code Ann. [§] 97-3-2 to Dedeaux wrongfully." *Id.* at 13.

Petitioner has also filed a Motion [32] for Disposition and Status, asking the Court to provide a status as to his Motion [30] for Rehearing, and he acknowledges

some clerical errors in his Motion [30] for Rehearing that he would like noted. The Court has noted those errors and their corrections while reviewing Petitioner's Motion [30] for Rehearing, and will proceed to rule. As such, Petitioner's Motion [32] for Disposition and Status will be denied as moot.

II. DISCUSSION

A. Standard of review

"The Federal Rules of Civil Procedure generally govern habeas proceedings." *Banister v. Davis*, 140 S. Ct. 1698, 1705 (2020). When a party files a request for reconsideration within 28 days of final judgment, a court appropriately construes the request as a motion to amend the judgment under Federal Rule of Civil Procedure 59(e). *See Faciane v. Sun Life Assurance Co. of Canada*, 931 F.3d 412, 423 (5th Cir. 2019); *see also Banister*, 140 S. Ct. at 1711 ("A Rule 59(e) motion, unlike a Rule 60(b) motion, does not count as a second or successive habeas application."). Because Dedeaux's Motion [30] for Rehearing was filed within 28 days of final judgment, the Court considers it under Rule 59(e).

The United States Court of Appeals for the Fifth Circuit has explained that Rule 59(e) motions "are for the narrow purpose of correcting manifest errors of law or fact or presenting newly discovered evidence" and "cannot be used to raise arguments which could, and should, have been made before the judgment issued." *Faciane*, 931 F.3d at 423 (quotation omitted). The Fifth Circuit has also held that "such a motion is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment." *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004). Reconsideration of

a judgment is an “extraordinary remedy that should be used sparingly.” *Id.*

B. Analysis

The Court has already thoroughly addressed all of Petitioner’s arguments in its Order [27] resolving his Objections to the Magistrate Judge’s Proposed Findings of Fact and Recommendation [22]. Petitioner’s Motion [30] for Rehearing does not implicate the narrow purpose of Rule 59(e), but instead simply rehashes his previous legal theories and arguments, which the Court has rejected. *See Faciane*, 931 F.3d at 423; *Templet*, 367 F.3d at 479. For these reasons, Petitioner’s Motion [30] for Rehearing is not well taken and will be denied. To the extent Petitioner’s Motion [30] could be construed as requesting an evidentiary hearing, such request is not well taken for the reasons stated in Respondent’s Response [31], and it will likewise be denied. *See Resp.* [31] at 4-6.

III. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that, Petitioner John Joseph Dedeaux’s Motion [30] for Rehearing is **DENIED**.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Petitioner John Joseph Dedeaux’s Motion [32] for Disposition and Status is **DENIED AS MOOT**.

SO ORDERED AND ADJUDGED, this the 23rd day of October, 2020.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JOHN JOSEPH DEDEAUX

v.

UNKNOWN TURNER

§
§
§
§
§
§
§

Civil No. 1:18cv263-HSO-RHW

PETITIONER

RESPONDENT

CERTIFICATE OF APPEALABILITY

A final order adverse to the applicant having been filed in the captioned habeas corpus case, in which the detention complained of arises out of process issued by a state court or a proceeding pursuant to 28 U.S.C. § 2254, the Court, considering the record in the case and the requirements of 28 U.S.C. § 2253, Rule 22(b) of the Federal Rules of Appellate Procedure, and Rule 11(a) of the RULES GOVERNING SECTION 2254 CASES FOR THE UNITED STATES DISTRICT COURTS, hereby finds that:

A Certificate of Appealability should not issue in this case. Jurists of reason could not conclude that that the petition states a valid claim of the denial of a constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Date: October 23, 2020

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE