

# MANDATE

E.D.N.Y. - Bklyn  
08-cv-526  
Ross, 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 11<sup>th</sup> day of August, two thousand twenty-two.

Present:

Eunice C. Lee,  
Beth Robinson,  
Myrna Pérez,  
*Circuit Judges.*

Jerry Bonton,

*Petitioner-Appellant,*

v.

22-553

Superintendent Robert Ercole,

*Respondent-Appellee.*

Appellant, pro se, moves for a certificate of appealability. Upon due consideration, it is hereby ORDERED that the motion is 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

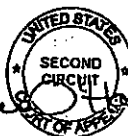
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Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

Catherine O'Hagan Wolfe

MANDATE ISSUED ON 09/23/2022



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CLOSED,HABEAS,IFP,MJSELECT-JMA,PROSE

**U.S. District Court  
Eastern District of New York (Brooklyn)  
CIVIL DOCKET FOR CASE #: 1:08-cv-00526-ARR**

Bonton v. Ercole  
Assigned to: Judge Allyne R. Ross  
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 02/04/2008  
Date Terminated: 08/20/2008  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus  
(General)  
Jurisdiction: Federal Question

**Petitioner**

**Jerry Bonton**

represented by **Jerry Bonton**  
# 02-A-5418  
Green Haven Correctional Facility  
P.O. Box 4000  
Stormville, NY 12582-0010  
PRO SE

V.

**Respondent**

**Superintendent Robert Ercole**

represented by **KINGS COUNTY DISTRICT  
ATTORNEYS OFFICE - GENERIC**  
Email: [appealsefile@brooklynda.org](mailto:appealsefile@brooklynda.org)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**NEW YORK STATE ATTORNEY  
GENERALS OFFICE - GENERIC**  
New York State Attorney Generals Office  
Email: [Arlene.roces@ag.ny.gov](mailto:Arlene.roces@ag.ny.gov)  
**TERMINATED: 04/25/2008**  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Howard Barry Goodman**  
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**LEAD ATTORNEY**

09/08/2008	<u>11</u>	NOTICE OF APPEAL as to <u>8</u> Clerk's Judgment, <u>7</u> Memorandum & Opinion, by Jerry Bonton. No fee paid. IFP granted. A Certificate of Appealability is denied. Service done via ECF. (McGee, Mary Ann) (Entered: 09/09/2008)
09/09/2008	<u>10</u>	Letter Response to Petitioner's Letter Motion for Reconsideration by Robert Ercole (Goodman, Howard) (Entered: 09/09/2008)
09/09/2008		Electronic Index to Record on Appeal sent to US Court of Appeals. For docket entries without a hyperlink, contact the court and we'll arrange for the document(s) to be made available to you. <u>2</u> Order to Show Cause,,, <u>4</u> Response to Order to Show Cause, <u>10</u> Letter, <u>8</u> Clerk's Judgment, <u>3</u> Letter, <u>5</u> Letter, <u>1</u> Petition for Writ of Habeas Corpus, <u>11</u> Notice of Appeal, <u>9</u> Motion for Reconsideration, <u>7</u> Memorandum & Opinion, Certificate of Appealability Denied,, (McGee, Mary Ann) (Entered: 09/09/2008)
10/27/2008	<u>12</u>	ORDER of USCA as to <u>11</u> Notice of Appeal filed by Jerry Bonton. A motions or motions of the type specified by Rule4(a)4, 4(b) or 6(b)(2)(i) of the FRAP having been filed in this matter, and now pending before the District Court, the appeal is stayed to await final disposition of said motion. Movant is directed to inform this Court in writing as to the status of each motion, at thirty day interval from the date of filing and immediately upon final disposition of the last outstanding motion and provide the Court a copy of all dispositive orders. Parties are advised that the appellate review of the lower court's disposition regarding any such motion requires a timely filed amended notice of appeal. Certified: 10/17/08. USCA#08-4448-pr. (McGee, Mary Ann) (Entered: 10/29/2008)
11/25/2008	<u>13</u>	OPINION AND ORDER: The Court withholds its decision on petitioner's <u>9</u> motion for reconsideration. The Court orders petitioner to show cause why he should be granted a stay by serving and filing within 30 days of the date of this Order a submission setting forth his reasons for why he has established "good cause" for his failure to exhaust his ineffective assistance of counsel claim in state court. The Court also orders respondent to serve and file a response within 20 days of receipt of petitioner's submission. So Ordered. (Ordered by Judge Allyne R. Ross, on 11/25/2008) C/mailed by Chambers. (Latka-Mucha, Wieslawa) (Entered: 11/26/2008)
12/26/2008	<u>14</u>	"Court Ordered Submission of Good Cause" filed by pro se Jerry Bonton, dated 12/19/2008. W/Attachments: # <u>1</u> Exhibits A - B; # <u>2</u> Affidavit of Service. (Latka-Mucha, Wieslawa) (Entered: 12/31/2008)
01/05/2009	<u>15</u>	REPLY to Response to Motion re <u>9</u> Letter MOTION for Reconsideration re: <u>7</u> Opinion & OrderLetter MOTION for Reconsideration re: <u>7</u> Opinion & Order Respondent's Answer to Petitioner's Response to Order to Show Cause ECF Document Number 14 filed by Robert Ercole. (Goodman, Howard) (Entered: 01/05/2009)
03/24/2009	<u>16</u>	OPINION AND ORDER: Petitioner's <u>9</u> motion for reconsideration is denied. The Clerk of Court is ordered to enter judgment accordingly. SO ORDERED. (Ordered by Judge Allyne R. Ross, on 3/24/2009). C/mailed by Chambers. (Latka-Mucha, Wieslawa) (Entered: 03/25/2009)
03/25/2009	<u>17</u>	JUDGMENT, in favor of Robert Ercole against Jerry Bonton. That petitioner take nothing of therespondent; and that petitioner's motion for reconsideration is denied. (Ordered by Clerk of Court on 3/25/2009) c/m with Appeals Package sent to Petitioner. (Galeano, Sonia) (Entered: 03/25/2009)

04/08/2009	<u>18</u>	NOTICE OF APPEAL as to <u>17</u> Judgment, <u>16</u> Order of Motion for Reconsideration by Jerry Bonton. No Fee Paid IFP was granted. Certificate of Appealability was Denied. NOA served ECF. (Gonzalez, Mary) (Entered: 04/13/2009)
04/13/2009		Electronic Index to Record on Appeal sent to US Court of Appeals. For docket entries without a hyperlink, contact the court and we'll arrange for the document(s) to be made available to you. <u>2</u> Order to Show Cause,,, <u>14</u> Affidavit, <u>13</u> Memorandum & Opinion,, <u>4</u> Response to Order to Show Cause, <u>10</u> Letter, <u>8</u> Clerk's Judgment, <u>18</u> Notice of Appeal, <u>3</u> Letter, <u>17</u> Judgment, <u>5</u> Letter, <u>16</u> Order on Motion for Reconsideration, <u>1</u> Petition for Writ of Habeas Corpus, <u>11</u> Notice of Appeal, <u>12</u> USCA Order,,, <u>9</u> Motion for Reconsideration, <u>7</u> Memorandum & Opinion, Certificate of Appealability Denied,, <u>15</u> Reply to Response to Motion, (Gonzalez, Mary) (Entered: 04/13/2009)
04/21/2009	<u>19</u>	First Supplemental Record on Appeal transmitted to US Court of Appeals re <u>18</u> Notice of Appeal, <u>11</u> Notice of Appeal. This record consists of document #6(SCR) only. It was requested by V. Mathias and is being sent to her attention. (McGee, Mary Ann) (Entered: 04/21/2009)
05/14/2009	<u>20</u>	Acknowledgment 1st SUPPLEMENTAL from USCA received re: <u>18</u> Appeal. Acknowledgment signed by SH 4/22/09. USCA#08/448pr. (Drayton, Lorraine) (Entered: 05/19/2009)
07/07/2009	<u>21</u>	<u>ORDER</u> : On March 24, 2009, this court denied petitioner's Rule 60(b) motion to reconsider a prior <u>16</u> Opinion and Order of this court denying Mr. Bonton's <u>1</u> petition for a writ of habeas corpus. Because Mr. Bonton failed to make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2) (1996), no certificate of appealability will be granted. SO ORDERED. (Ordered by Judge Allyne R. Ross on 7/7/2009) C/mailed by Chambers. (Latka-Mucha, Wieslawa) (Entered: 07/07/2009)
09/29/2009	<u>22</u>	MANDATE of USCA as to <u>18</u> Notice of Appeal filed by Jerry Bonton, <u>11</u> Notice of Appeal filed by Jerry Bonton. Appellant's motion for a Certificate of Appealability is denied and the appeal is dismissed. Issued as Mandate: 9/22/09. USCA# 08-4448-pr. (McGee, Mary Ann) (Entered: 10/05/2009)
11/06/2009	<u>23</u>	Appeal Record Returned from the Court from Appeals containing documents Respondent Exhibit A & C. USCA#08-448pr. (Drayton, Lorraine) (Entered: 11/06/2009)
11/19/2020	<u>24</u>	MOTION for Reconsideration / <i>Application for Rule 60(b)(3) Relief</i> by Jerry Bonton. (Lee, Tiffeny) (Entered: 11/20/2020)
01/05/2021	<u>25</u>	MANDATE of USCA as to Petitioner's motion for leave to file a successive 28 U.S.C. § 2254 petition. It is hereby ORDERED that the petition is DENIED. Petitioner has not made a prima facie showing that the requirements of 28 U.S.C. § 2244(b) are satisfied. See document for further details. Issued as Mandate: 1/5/2021. USCA# 20-3893. (Mejia, Salomon) (Entered: 01/08/2021)
01/13/2021		ORDER denying <u>24</u> Motion for Reconsideration: Petitioner's motion for reconsideration pursuant to Federal Rule of Civil Procedure 60(b) is denied. More than a decade has passed since my denial of his habeas petition in 2008. Petitions under Rule 60(b) must be made within a "reasonable time," and petitions pursuant to 60(b)(1) (3) must not be brought no more than a year after the entry of the judgement or order. Fed. R. Civ. P. 60(c)(1). Even holding petitioners pro se submission to "less stringent standards than formal pleadings drafted by lawyers," <u>Haines v. Kerner</u> , 404 U.S. 519, 520 (1972) (per

		curiam), I find that petitioners motion is barred by Fed. R. Civ. P. 60(c)(1). Petitioners motion is therefore denied. Ordered by Judge Allyne R. Ross on 1/13/2021. (Schnell, Samantha) (Entered: 01/13/2021)
02/28/2022	<u>26</u>	MOTION to Vacate ( <i>FRCP Rule 60</i> ) by Jerry Bonton. (Guzzi, Roseann) (Entered: 03/02/2022)
03/03/2022		ORDER denying <u>26</u> Motion to Vacate. Petitioner's motion pursuant to Federal Rule of Civil Procedure 60(b) is denied. More than a decade has passed since my denial of his habeas petition in 2008. Petitions under Rule 60(b) must be made within a "reasonable time," and petitions pursuant to 60(b)(1), (2), and (3) must be brought no more than a year after the entry of the judgement or order. Fed. R. Civ. P. 60(c)(1). Even holding petitioners pro se submission to "less stringent standards than formal pleadings drafted by lawyers," <i>Haines v. Kerner</i> , 404 U.S. 519, 520 (1972) (per curiam), I find that petitioners motion is barred by Fed. R. Civ. P. 60(c)(1). Petitioners motion is therefore denied. Ordered by Judge Allyne R. Ross on 3/3/2022. (Reiser, Samantha) (Entered: 03/03/2022)
03/04/2022	<u>27</u>	MEMORANDUM in Support "Addendum and previously undisclosed supporting documents" filed by Jerry Bonton, plaintiff pro se. (Guzzi, Roseann) (Entered: 03/07/2022)
03/14/2022	<u>28</u>	NOTICE OF APPEAL as to Order on Motion to Vacate, by Jerry Bonton. (Jones, Vasean) (Entered: 03/15/2022)
03/15/2022		APPEAL FILING FEE DUE re <u>28</u> Notice of Appeal Payment in the amount of \$505.00, can be made in person to the clerks office, or mailed in or paid online with the event <i>Civil Case Appeal Filing Fee</i> . (Jones, Vasean) (Entered: 03/15/2022)
03/15/2022		Electronic Index to Record on Appeal sent to US Court of Appeals. <u>28</u> Notice of Appeal Documents are available via Pacer. For docket entries without a hyperlink or for documents under seal, contact the court and we'll arrange for the document(s) to be made available to you. (Jones, Vasean) (Entered: 03/15/2022)
09/23/2022	<u>29</u>	MANDATE of USCA as to <u>28</u> Notice of Appeal filed by Jerry Bonton. It is hereby ORDERED that the motion is 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. <i>Kellogg v. Strack</i> , 269 F.3d 100, 104 (2d Cir. 2001) (per curiam). Issued as Mandate: 9/23/2022. USCA# 22- 553. (Jones, Vasean) (Entered: 09/23/2022)

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