

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-10465-E

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

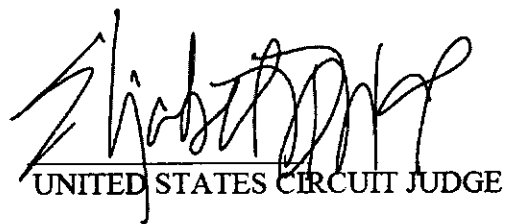
AARON MICHAEL MURRAY,
a.k.a. Tyler Peterson,

Defendant-Appellant.

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

ORDER:

Aaron Murray's motion for leave to proceed *in forma pauperis* is DENIED because the appeal is frivolous. See 28 U.S.C. § 1915(e)(2)(B); *Pace v. Evans*, 709 F.2d 1428, 1429 (11th Cir. 1983).



UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-10465-E

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

AARON MICHAEL MURRAY,
a.k.a. Tyler Peterson,

Defendant-Appellant.

Appeals from the United States District Court
for the Middle District of Florida

Before: NEWSOM and BRANCH, Circuit Judges.

BY THE COURT:

Aaron Murray has moved for leave to file an out-of-time motion for reconsideration of this Court's June 28, 2022, order denying his motion for leave to proceed *in forma pauperis* on appeal from the district court's order denying his motion to recuse the district court judge, and his subsequent motion for reconsideration. He has also filed a motion for reconsideration. Murray's motion for leave to file his out-of-time motion for reconsideration is GRANTED. Because Murray has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his motion, his amended motion for reconsideration is DENIED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

UNITED STATES OF AMERICA

VS.

CASE NO: 5:13-cr-49-ACC-PRL

AARON MICHAEL MURRAY

ORDER

This cause comes before the Court on review of Defendant Aaron Michael Murray's Motion for Reconsideration (Doc. 174) of the Court's November 29, 2021 denial of his "Motion for Recusal of Judge Conway." (Doc. 173). The Government is not required to respond to the Motion. Defendant is currently incarcerated at the Federal Correctional Complex in Coleman, Florida as the result of a June 2, 2015 conviction for one count of transportation of child pornography; he was sentenced to 200 months in prison and to 20 years of supervised release. (Docs. 87, 141). His writ of certiorari to the United States Supreme Court regarding this Court's denial of his Motion for Compassionate Release was denied on January 10, 2022 (Doc. 175).

For the reasons set forth below, Defendant's *pro se* Motion for Reconsideration (Doc. 174) will be denied.

I. LEGAL STANDARD

“Although the Federal Rules of Criminal Procedure do not specifically authorize motions for reconsideration, both the Supreme Court and [the Eleventh Circuit Court of Appeals] have permitted parties to file such motions in criminal cases.” *Serrano v. United States*, 411 F. App’x 253, 255 (11th Cir. 2011) (citing *United States v. Phillips*, 597 F.3d 1190, 1199–200 (11th Cir. 2010)). Thus, “when district courts exercise their discretion to entertain motions for reconsideration in criminal cases, they generally employ the standards underlying motions for reconsideration in civil cases.” *United States v. Okonkwo*, No. 6:14-cr-5-PGB-GJK, 2020 WL 5264914, at *1 (M.D. Fla. Aug. 10, 2020); see *United States v. Lewis*, No. 6:13-cr-221-JA-KRS, 2020 WL 5877134 (M.D. Fla. Oct. 2, 2020).

In civil cases, reconsideration “is an extraordinary remedy which will only be granted upon a showing of one of the following: (1) an intervening change in law, (2) the discovery of new evidence which was not available at the time the Court rendered its decision, or (3) the need to correct clear error or manifest injustice.” *Okonkwo*, 2020 WL 5264914 at *1; see *Lewis*, 2020 WL 5877134 at *1 (listing the same parameters). “A motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.” *Okonkwo*, 2020 WL 5264914 at *1 (citation and internal quotation marks omitted); see *Lewis*, 2020 WL 5877134 at *1.

II. ANALYSIS

In his *pro se* Motion for Reconsideration (Doc. 174), Defendant requests that the Court reconsider his *pro se* Motion for Recusal because “the Court failed to address the actual issue and has patently misunderstood his claim.” (Doc. 174 at 5). He argues (again) that the Court’s “extrajudicial actions” of serving on the board of the Center for Governmental Responsibility of the University of Florida Levin College of Law and service on the Foreign Intelligence Surveillance Court “create[] an appearance of impropriety or bias . . . to favor” the Government and “cast doubt” on the Court’s “impartiality in favor of the Government.” (*Id.*).

Defendant argues precisely the same arguments he made in the original Motion for Recusal,¹ which the Court denied. “It is wholly inappropriate in a motion for reconsideration to relitigate the merits of the case or to vent dissatisfaction with the Court’s reasoning.” *Okonkwo*, 2020 WL 5264914 at *1 (citation and internal quotation marks omitted). Defendant fails to satisfy the standard for reconsideration. He seeks to relitigate the merits and express his dissatisfaction with the ruling. Defendant’s *pro se* Motion for Reconsideration (Doc. 174) is due to be denied.

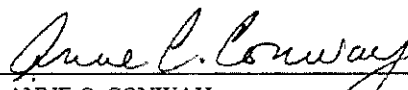
III. CONCLUSION

Based on the foregoing, it is ordered as follows:

1. Defendant’s Motion for Reconsideration (Doc. 174) of the Court’s November 29, 2021 Order is **DENIED**.

¹ Defendant newly complains that his post-conviction motions should be “reassigned” to a new judge in the Ocala Division where he committed his crimes. Judges throughout the Middle District of Florida have the authority to decide cases in any of the divisions within the District without regard to the location of their chambers.

DONE and **ORDERED** in Chambers, Orlando, Florida on January 28,
2022.


ANNE C. CONWAY
United States District Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

UNITED STATES OF AMERICA

VS.

CASE NO: 5:13-cr-49-ACC-PRL

AARON MICHAEL MURRAY

ORDER

This cause comes before the Court on Defendant Aaron Michael Murray's *pro se* "Motion for Recusal of Judge Conway." (Doc. 172). Defendant is currently incarcerated at the Federal Correctional Complex in Coleman, Florida as the result of a June 2, 2015 conviction for one count of transportation of child pornography; he was sentenced to 200 months in prison and to 20 years of supervised release. (Docs. 87, 141).

Defendant requests recusal on the basis of 28 U.S.C. § 455(a), arguing that the Court's "action (or lack thereof) does not instill confidence in the judiciary by the public" and will "cause significant harm to the public interest." (*Id.* at 2). A judge is required to "disqualify [her]self in any proceeding in which [the judge's] impartiality might reasonably be questioned." 28 U.S.C. § 455(a). In order to succeed on a recusal argument pursuant to 28 U.S.C. § 455(a), a movant must prove that "an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." *Parker v. Connors Steel Co.*, 855 F.2d 1510, 1524 (11th Cir. 1988). Defendant's stated basis for the Motion is the Court's service as an advisor on the board of the Center for Governmental Responsibility of the University of Florida Levin College of Law and service on the Foreign Intelligence Surveillance Court, neither of which supports recusal in Defendant's child pornography case.

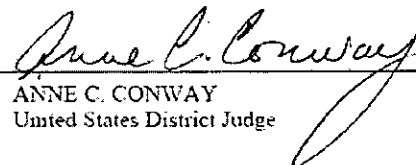
Moreover, even if Defendant had sought recusal under § 455(b) because the Court has

denied Defendant's *pro se* Motions for Compassionate Release (Doc. 162) and Motion for Appointment of Counsel and Reconsideration (Doc. 164) along with other rulings substantively adverse to him (Docs. 168, 170), it is well established that "judicial rulings alone almost never constitute a valid basis for a bias or impartiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994). "[T]hey are proper grounds for appeal, not for recusal." *Id.* Murray appealed the Court's rulings on March 4, 2021. (Doc. 165). On September 8, 2021, the Eleventh Circuit dismissed Murray's appeal and the mandate issued at that time. (*See* Doc. 171).

Based on the foregoing, it is ordered as follows:

1. The Motion for Recusal (Doc. 172) is **DENIED**.

DONE and **ORDERED** in Chambers, Orlando, Florida on November 29, 2021.


ANNE C. CONWAY
United States District Judge

Copies furnished to:

Counsel of Record
Magistrate Judge
United States Marshals Service
United States Probation Office
United States Pretrial Services