

No. 21-3667

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Sep 30, 2022

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHAEL LEE GORDON,

Defendant-Appellant.

ORDER

BEFORE: SUHRHEINRICH, GILMAN, and KETHLEDGE, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

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

**100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988**

**Deborah S. Hunt
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Filed: September 30, 2022

**Michael Lee Gordon
Kansas City RRM
400 State Avenue
Suite 800
Kansas City, KS 66101-0000**

**Re: Case No. 21-3667, *USA v. Michael Gordon*
Originating Case No.: 2:97-cr-00167-6**

Dear Mr. Gordon,

The Court issued the enclosed Order today in this case.

Sincerely yours,

**s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077**

cc: Mr. Kevin Koller

Enclosure

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 15, 2022
DEBORAH S. HUNT, Clerk

No. 21-3667

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHAEL LEE GORDON,

Defendant-Appellant.

Before: SUHRHEINRICH, GILMAN, and KETHLEDGE, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Southern District of Ohio at Columbus.

THIS CAUSE was heard on the record from the district court and was submitted on the
briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court
is AFFIRMED.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

NOT RECOMMENDED FOR PUBLICATION

No. 21-3667

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Jun 15, 2022

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee,)	
)	ON APPEAL FROM THE UNITED
v.)	STATES DISTRICT COURT FOR
)	THE SOUTHERN DISTRICT OF
MICHAEL LEE GORDON,)	OHIO
)	
Defendant-Appellant.)	

ORDER

Before: SUHRHEINRICH, GILMAN, and KETHLEDGE, Circuit Judges.

Michael Lee Gordon, a federal prisoner proceeding pro se, appeals the district court's order denying his motion to recuse the district court judge and to prevent the judge from ruling on post-judgment motions that Gordon filed following his Hobbs Act robbery and firearm convictions. Gordon also moves for leave to proceed in forma pauperis on appeal. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 1999, a jury convicted Gordon of seven counts of interfering with commerce by robbery, in violation of the Hobbs Act, 18 U.S.C. § 1951(a), and seven counts of using or carrying a firearm in relation to a crime of violence, in violation of 18 U.S.C. § 924(c). The district court sentenced Gordon to 1,651 months of imprisonment. We affirmed. *United States v. Gordon*, No. 99-3679, 2000 WL 1785905, at *10 (6th Cir. Nov. 22, 2000). Gordon filed his first 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence in 2001. The district court denied the motion on the merits, and this court denied a certificate of appealability. *Gordon v. United States*, No. 02-4224 (6th Cir. Sept. 3, 2003). Gordon has since filed several

unsuccessful motions seeking this court's authorization to file a second or successive § 2255 motion to vacate.

In July 2021, Gordon filed several motions seeking to reopen his § 2255 proceedings. He also moved the district court judge to recuse himself, arguing that the district court judge was biased against him. Gordon's claim of bias was based upon his allegation that the judge conspired with the prosecutor and defense counsel to allow FBI Agent Kevin Horan to present hearsay testimony at trial. The district court denied the recusal motion, stating that it did not enter into a conspiracy with the government and defense counsel to admit improper evidence and finding that Gordon did not cite any evidence of extrajudicial or personal bias or prejudice. The district court subsequently transferred Gordon's motions to reopen his § 2255 proceedings to this court as second or successive § 2255 motions.

On appeal, Gordon reiterates his argument that the district court judge should have recused himself because he conspired with the prosecutor and defense counsel to admit inadmissible testimony at trial. He also argues for the first time that the district court judge's ruling on Gordon's use of a peremptory challenge during voir dire showed bias.

This court reviews a district court's denial of a recusal motion for an abuse of discretion. *Decker v. GE Healthcare, Inc.*, 770 F.3d 378, 388 (6th Cir. 2014). Under 28 U.S.C. § 144, a party may seek recusal of a judge due to personal bias or prejudice by filing an affidavit and certificate of good faith. A separate statute, 28 U.S.C. § 455(a), states that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Under both §§ 144 and 455, recusal is required "if a reasonable, objective person, knowing all of the circumstances, would have questioned the judge's impartiality." *Hughes v. United States*, 899 F.2d 1495, 1501 (6th Cir. 1990).

To establish bias, Gordon relies exclusively on two judicial rulings: the district court judge's decision to admit Agent Horan's testimony and his denial of a peremptory challenge. But "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994). The conversation that Gordon quoted in his recusal motion shows that the district court judge made a reasoned decision based on the facts

when ruling on Agent Hqran's testimony, and on direct appeal we held that the denial of the peremptory challenge was not clearly erroneous. *See Gordon*, 2000 WL 1785905, at *9. Gordon cites no comments or other evidence suggesting that the district judge had a personal or extrajudicial bias against him.

Accordingly, we **GRANT** leave to proceed in forma pauperis for purposes of this appeal only and **AFFIRM** the district court's order.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

United States of America

v.

Case No. 2:97-cr-167-6

Michael Lee Gordon

OPINION AND ORDER

Defendant was convicted by a jury on Counts 1, 3, 5, 7, 9, 11, and 13 for obstruction of commerce by robbery (Hobbs Act) in violation of 18 U.S.C. §1951, and on Counts 2, 4, 6, 8, 10, 13, and 14 for carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. §924(c). Defendant has filed several motions which are currently pending in his case. Defendant has filed a motion for recusal.

A district judge is required to recuse himself "only if a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." United States v. Story, 716 F.2d 1088, 1091 (6th Cir. 1983) (quoting Trotter v. International Longshoremen's & Warehousemen's Union, 704 F.2d 1141, 1144 (9th Cir. 1983)). This standard is objective, not based on the subjective view of the party. United States v. Sammons, 918 F.2d 592, 599 (6th Cir. 1990).

Defendant argues that this court is biased based on rulings the court made during defendant's trial. These allegations are similar to those made in a motion for recusal filed on December 31, 2008, Doc. 392, which was denied on February 1, 2010, see Doc. 412. In order to justify recusal, the judge's prejudice or bias must be personal or extrajudicial. United States v. Jamieson, 427 F.3d 394, 405 (6th Cir. 2005). "'Personal' bias is prejudice that

emanates from some source other than participation in the proceedings or prior contact with related cases." Id. (quoting Youn v. Track, Inc., 324 F.3d 409, 423 (6th Cir. 2003)).

"[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." Liteky v. United States, 510 U.S. 540 (1994); see also United States v. Flowers, 818 F.2d 464, 468-69 (6th Cir. 1987) (district judge not required to recuse himself merely because he ruled on pretrial motions, admission of evidence, and had knowledge of the facts of the case acquired from his association with the proceedings); Woodruff v. Tomlin, 593 F.2d 33, 44 (6th Cir. 1979) (recusal cannot be based on decisions or rulings of the judge).

This court did not enter into any conspiracy or understanding with defense counsel and counsel for the government to admit any testimony or evidence in defendant's case, nor was there any understanding between this court and defense counsel that defense counsel would not object to any evidence introduced in the case. This court made evidentiary rulings during the trial which were not erroneous, and no objection to these rulings or to Agent Horan's testimony was raised in defendant's direct appeal from his conviction. These rulings were not extrajudicial, and are not sufficient to establish bias or prejudice.

Defendant's motion for recusal (Doc. 613) is denied.

Date: July 8, 2021

s/James L. Graham
James L. Graham
United States District Judge