

Other Orders/Judgments

5:23-cv-00029-DCB-FKB Winding v.
McClure et al

HABEAS,ADMINISTRATIVE,CASREF,FKB

U.S. District Court

Southern District of Mississippi

Appendix
"A"


Notice of Electronic Filing

The following transaction was entered on 5/2/2023 at 2:44 PM CDT and filed on 5/2/2023

Case Name: Winding v. McClure et al
Case Number: 5:23-cv-00029-DCB-FKB
Filer:
Document Number: 11

Docket Text:

Memorandum Opinion and Order re [1] Petition for Writ of Habeas Corpus. The Court dismisses this case without prejudice. Signed by District Judge David C. Bramlette, III on 5/2/2023 (VM)

5:23-cv-00029-DCB-FKB Notice has been electronically mailed to:

Lynn Fitch-State Gov agcivillit@ago.ms.gov

5:23-cv-00029-DCB-FKB Notice has been delivered by other means to:

James C. Winding
K8115
MSP
Unit 26A, B-Zone, #90
Parchman, MS 38738

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

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

JAMES C. WINDING

PETITIONER

VERSUS

CIVIL ACTION NO. 5:23-cv-29-DCB-FKB

MARC McCLURE, et al.

RESPONDENTS

MEMORANDUM OPINION AND ORDER

This matter is before the Court sua sponte for consideration of dismissal. Pro se Petitioner James C. Winding brings this Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. Petitioner initially filed his § 2254 Petition in the United States District Court for the Northern District of Mississippi. Pet. [1] at 1. By Order [6] entered on March 21, 2023, the Northern District of Mississippi transferred this § 2254 Habeas to this Court. See Order [6] at 1–2. This civil action was then filed on April 21, 2023. The Court has liberally construed the pleadings and for the reasons stated, the Court dismisses this case without prejudice.

Pro Se Petitioner James C. Winding is an inmate incarcerated at the Mississippi State Penitentiary in Parchman, Mississippi. See Pet. [1] at 1. He is serving a 30-year sentence for each conviction of kidnapping and sexual battery. *Id.*; see also *Winding v. State*, 908 So. 2d 163, 171 (Miss. Ct. App. 2005) (affirming convictions and sentences). Winding files this request for habeas relief pursuant to 28 U.S.C. § 2254, challenging his state convictions, sentences, and present incarceration.

The United States Court of Appeals for the Fifth Circuit entered an Order on January 10, 2023, sanctioning Winding \$500.00 and barring him from filing “any pleadings based, in whole or in part, on his kidnapping and sexual battery convictions and sentences” in that court or any court subject to the Fifth Circuit’s jurisdiction “until the sanction is satisfied.” *In re Winding*, No. 22-90065 (5th Cir. 2023).

Winding does not establish that he has satisfied the \$500.00 sanction. This action therefore will be dismissed without prejudice. *See Slone v. Jackson Housing Auth.*, No. 3:07-CV-713-HTW-LRA, 2009 WL 243090, at *1 (S.D. Miss. Jan. 30, 2009) (citing cases and dismissing for failure to comply with prior sanction orders). Dismissal without prejudice is warranted to allow Winding an opportunity to comply with the Fifth Circuit's mandate.

For the reasons stated, the Court dismisses this case without prejudice. The Court will issue a separate final judgment consistent with this Order.

SO ORDERED, this the 2nd day of May, 2023.

s/David Bramlette
UNITED STATES DISTRICT JUDGE

Other Orders/Judgments

5:23-cv-00029-DCB-FKB Winding v.
McClure et al

HABEAS,ADMINISTRATIVE,CASREF,FKB

U.S. District Court

Southern District of Mississippi

Notice of Electronic Filing

The following transaction was entered on 5/2/2023 at 2:47 PM CDT and filed on 5/2/2023

Case Name: Winding v. McClure et al
Case Number: 5:23-cv-00029-DCB-FKB
Filer:
WARNING: CASE CLOSED on 05/02/2023
Document Number: 12

Docket Text:

FINAL JUDGMENT - IT IS, THEREFORE, ORDERED AND ADJUDGED that, this civil action is dismissed without prejudice. Signed by District Judge David C. Bramlette, III on 5/2/2023 (VM)

5:23-cv-00029-DCB-FKB Notice has been electronically mailed to:

Lynn Fitch-State Gov agcivillit@ago.ms.gov

5:23-cv-00029-DCB-FKB Notice has been delivered by other means to:

James C. Winding
K8115
MSP
Unit 26A, B-Zone, #90
Parchman, MS 38738

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

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

JAMES C. WINDING

PETITIONER

VERSUS

CIVIL ACTION NO. 5:23-cv-29-DCB-FKB

MARC McCLURE, et al.

RESPONDENTS

FINAL JUDGMENT

In accordance with the Court's Memorandum Opinion and Order entered this date and incorporated herein by reference,

IT IS, THEREFORE, ORDERED AND ADJUDGED that, this civil action is dismissed without prejudice.

SO ORDERED AND ADJUDGED, this the 2nd day of May, 2023.

s/David Bramlette

UNITED STATES DISTRICT JUDGE

Other Orders/Judgments

5:23-cv-00029-DCB-FKB Winding v. McClure et al

CASE CLOSED on 05/02/2023

CLOSED,HABEAS,ADMINISTRATIVE,CASREF,FKB

U.S. District Court

Southern District of Mississippi

Notice of Electronic Filing

The following transaction was entered on 5/2/2023 at 2:48 PM CDT and filed on 5/2/2023

Case Name: Winding v. McClure et al

Case Number: 5:23-cv-00029-DCB-FKB

Filer:

WARNING: CASE CLOSED on 05/02/2023

Document Number: 13

Docket Text:

Certificate of Appealability Denied. Signed by District Judge David C. Bramlette, III on 5/2/2023 (VM)

5:23-cv-00029-DCB-FKB Notice has been electronically mailed to:

Lynn Fitch-State Gov agcivillit@ago.ms.gov

5:23-cv-00029-DCB-FKB Notice has been delivered by other means to:

James C. Winding
K8115
MSP
Unit 26A, B-Zone, #90
Parchman, MS 38738

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

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

JAMES C. WINDING

PETITIONER

VERSUS

CIVIL ACTION NO. 5:23-cv-29-DCB-FKB

MARC McCLURE, et al.

RESPONDENTS

CERTIFICATE OF APPEALABILITY - DENIED

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, this 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 in the United States District Courts, hereby finds that a Certificate of Appealability should not issue. The applicant has failed to show “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether [this Court] was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

SO ORDERED, this the 2nd day of May, 2023.

s/David Bramlette

UNITED STATES DISTRICT JUDGE

Orders on Motions**5:23-cv-00029-DCB-FKB****Winding v. McClure et al CASE****CLOSED on 05/02/2023**

CLOSED,APPEAL,HABEAS,FKB

U.S. District Court**Southern District of Mississippi****Notice of Electronic Filing**

The following transaction was entered on 5/11/2023 at 4:45 PM CDT and filed on 5/11/2023

Case Name: Winding v. McClure et al**Case Number:** 5:23-cv-00029-DCB-FKB**Filer:****WARNING: CASE CLOSED on 05/02/2023****Document Number:** 24**Docket Text:**

ORDER denying [14] Motion for Reconsideration re [14] MOTION for Reconsideration re [12] Judgment filed by James C. Winding. ORDERED that Petitioner's Motion [ECF No. 14] for Reconsideration is construed as Petitioner's Motion to Alter or Amend the Judgment filed pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. FURTHER ORDERED that Petitioner's Motion [ECF No. 14] to Alter or Amend the Judgment is DENIED. Signed by District Judge David C. Bramlette, III on May 11, 2023. (Ida)

5:23-cv-00029-DCB-FKB Notice has been electronically mailed to:Lynn Fitch-State Gov agcivillit@ago.ms.gov**5:23-cv-00029-DCB-FKB Notice has been delivered by other means to:**

James C. Winding
K8115
MSP
Unit 26A, B-Zone, #90
Parchman, MS 38738

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**n/a**Electronic document Stamp:**

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

JAMES C. WINDING

PETITIONER

VERSUS

CIVIL ACTION NO. 5:23-cv-29-DCB-FKB

MARC McCLURE, Superintendent, et al.

RESPONDENTS

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION

This matter is before the Court on pro se Petitioner James C. Winding's ("Petitioner") Motion for Reconsideration ("Motion") [ECF No. 14] filed on May 5, 2023. Petitioner is requesting the Court to reconsider the Final Judgment ("Judgment") [ECF No. 12] entered on May 2, 2023, dismissing this case without prejudice. The Court, having examined the Motion, the record, the applicable legal authority, and being fully informed in the premises, finds that Petitioner's Motion should be denied.

Petitioner's Motion was filed within 28 days after the Judgment was entered. Therefore, the Motion will be construed as a Motion to Alter or Amend the Judgment filed pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. See *In re Franklin*, 832 F. App'x 340, 341 (5th Cir. 2020) (stating that if a motion is asking the Court to reconsider a prior ruling and is filed within 28 days of the entry of the judgment being challenged then it is construed as a Rule 59(e) Motion) (citing

Demahy v. Schwarz Pharma, Inc., 702 F.3d 177, 182 n.2 (5th Cir. 2012)).

Rule 59(e) provides the district court the chance "to rectify its own mistakes in the period immediately following its decision." *Banister v. Davis*, 140 S. Ct. 1698, 1703 (2020) (quoting *White v. New Hampshire Dep't of Emp. Sec.*, 455 U.S. 445, 450 (1982)). A motion filed pursuant to Rule 59(e) however "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) (citing *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir. 1990)). Instead, "a motion to alter or amend the judgment under Rule 59(e) must clearly establish either a manifest error of law or fact or must present newly discovered evidence and cannot be used to raise arguments which could, and should, have been made before the judgment issued." *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 863 (5th Cir. 2003) (citations and quotations omitted).

Petitioner objects to this Court's decision to dismiss his petition for habeas corpus relief. Pet'r's Mot. [ECF No. 14] at 1. Petitioner argues that this case should proceed based on 18 U.S.C. § 1203 which prohibits hostage-taking. *Id.* Petitioner further argues that the "sanction from the United States Court

of Appeals does not apply" because he is "not challenging his conviction or sentence 'only' a direct 'hit' to the unlawful charge of sexual battery." *Id.* at 2. Petitioner's arguments are without merit for the following reasons.

As a private citizen, Petitioner does not have the authority to initiate a federal criminal prosecution such as 18 U.S.C. § 1203. See *Gill v. State of Texas*, 153 F. App'x 261, at * 1 (5th Cir. 2005) (citing *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973); *United States v. Batchelder*, 442 U.S. 114, 124 (1979)). Furthermore, Petitioner's argument that the Fifth Circuit's sanction, see *In re Winding*, No. 22-90065 (5th Cir. 2023), does not apply in this case because he is challenging the unlawful "charge" of sexual battery, for which he was subsequently convicted, not his conviction or sentence of sexual battery, is frivolous. Petitioner's Motion does not assert any arguments (1) that he did not already raise in his petition, (2) that were not available to him at the time of filing his petition, or (3) that otherwise satisfy the requirements of Rule 59(e). Therefore, Petitioner fails to satisfy the requirements for obtaining relief under Rule 59(e) and Petitioner's Motion is without merit and will be denied.

For the foregoing reasons, Petitioner's Motion [ECF No. 14] will be DENIED. Accordingly,

IT IS ORDERED that Petitioner's Motion [ECF No. 14] for Reconsideration is construed as Petitioner's Motion to Alter or Amend the Judgment filed pursuant to Rule 59(e) of the Federal Rules of Civil Procedure

IT IS FURTHER ORDERED that Petitioner's Motion [ECF No. 14] to Alter or Amend the Judgment is DENIED.

SO ORDERED, this 11th day of May, 2023.

s/David Bramlette
UNITED STATES DISTRICT JUDGE

Orders on Motions5:23-cv-00029-DCB-FKBWinding v. McClure et al **CASE****CLOSED on 05/02/2023**

CLOSED,APPEAL,HABEAS,FKB

U.S. District Court**Southern District of Mississippi****Notice of Electronic Filing**

The following transaction was entered on 5/11/2023 at 4:52 PM CDT and filed on 5/11/2023

Case Name: Winding v. McClure et al**Case Number:** 5:23-cv-00029-DCB-FKB**Filer:****WARNING: CASE CLOSED on 05/02/2023****Document Number:** 26**Docket Text:****ORDER denying [17] Motion to Submit Affidavit of Poverty and to Proceed Under Disability Act. Signed by District Judge David C. Bramlette, III on May 11, 2023. (lda)****5:23-cv-00029-DCB-FKB Notice has been electronically mailed to:**

Lynn Fitch-State Gov agcivillit@ago.ms.gov

5:23-cv-00029-DCB-FKB Notice has been delivered by other means to:James C. Winding
K8115
MSP
Unit 26A, B-Zone, #90
Parchman, MS 38738

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**n/a**Electronic document Stamp:**[STAMP dcecfStamp_ID=1081288797 [Date=5/11/2023] [FileNumber=6510799-0]
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

JAMES C. WINDING

PETITIONER

VERSUS

CIVIL ACTION NO. 5:23-cv-29-DCB-FKB

MARC McCLURE, Superintendent, et al.

RESPONDENTS

ORDER DENYING PETITIONER'S MOTION TO SUBMIT
AFFIDAVIT OF POVERTY AND TO PROCEED UNDER DISABILITY ACT

This matter is before the Court on Petitioner James C. Winding's ("Petitioner") Motion to Submit Affidavit of Poverty and to Proceed Under Disability Act ("Motion") [ECF No. 17]. The Court, having examined the Motion, the record, the applicable legal authority, and being fully informed in the premises finds that Petitioner's Motion should be denied.

On May 2, 2023, the Court entered a Memorandum Opinion and Order ("Memorandum Opinion") [ECF No. 11] and Final Judgment ("Judgment") [ECF No. 12] dismissing this habeas civil action. As stated in the Memorandum Opinion, the United States Court of Appeals for the Fifth Circuit entered an Order on January 10, 2023, sanctioning Petitioner \$500.00 and barring him from filing "any pleadings based, in whole or in part, on his kidnapping and sexual battery convictions and sentences" in that court or any court subject to the Fifth Circuit's jurisdiction "until the sanction is satisfied." See *In re Winding*, No. 22-90065 (5th Cir. 2023). Liberally construing Petitioner's Motion, the Court

finds that Petitioner is requesting that this Court waive or disregard the Fifth Circuit's sanction based on the Disability Act and allow him to proceed. Pet'r's Mot. [ECF No. 17] at 1. This Court is without authority to waive, disregard, or overturn the Fifth Circuit's requirement that Petitioner pay the \$500.00 sanction. Petitioner's Motion is without merit.

For the foregoing reasons, Petitioner's Motion [ECF No. 17] will be denied. Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion to Submit Affidavit of Poverty and to Proceed Under Disability Act [ECF No. 17] is DENIED.

SO ORDERED, this 11th day of May, 2023.

s/David Bramlette
UNITED STATES DISTRICT JUDGE

Orders on Motions**5:23-cv-00029-DCB-FKB****Winding v. McClure et al CASE****CLOSED on 05/02/2023**

CLOSED,APPEAL,HABEAS,FKB

U.S. District Court**Southern District of Mississippi****Notice of Electronic Filing**

The following transaction was entered on 5/11/2023 at 4:50 PM CDT and filed on 5/11/2023

Case Name: Winding v. McClure et al**Case Number:** 5:23-cv-00029-DCB-FKB**Filer:****WARNING: CASE CLOSED on 05/02/2023****Document Number:** 25**Docket Text:****ORDER denying [16] Motion to Appoint Counsel. Signed by District Judge David C. Bramlette, III on May 11, 2023. (lda)****5:23-cv-00029-DCB-FKB Notice has been electronically mailed to:**

Lynn Fitch-State Gov agcivillit@ago.ms.gov

5:23-cv-00029-DCB-FKB Notice has been delivered by other means to:James C. Winding
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MSP
Unit 26A, B-Zone, #90
Parchman, MS 38738

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**n/a**Electronic document Stamp:**[STAMP dcecfStamp_ID=1081288797 [Date=5/11/2023] [FileNumber=6510796-0]
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

JAMES C. WINDING

PETITIONER

VERSUS

CIVIL ACTION NO. 5:23-cv-29-DCB-FKB

MARC McCLURE, Superintendent, et al.

RESPONDENTS

ORDER DENYING MOTION TO APPOINT COUNSEL

This matter is before the Court on Petitioner James C. Winding's ("Petitioner") unsigned pleading entitled "Petition to Appoint the Attorney General" and docketed as a Motion to Appoint Counsel ("Motion") [ECF No. 16]. The Court, having examined the Motion, the record, the applicable legal authority, and being fully informed in the premises, finds that the Motion should be denied.

On May 2, 2023, the Court dismissed this civil action without prejudice and it remains closed. J. [ECF No. 12] at 1. Petitioner's Motion simply restates 42 U.S.C. § 1997a(a)(b) and does not seek any type of relief. Pet'r's Mot. [ECF No. 16] at 1. According to the title of Petitioner's Motion, the Court finds that Petitioner is requesting that the Attorney General be appointed to this habeas civil action based on 42 U.S.C. § 1997e. Petitioner's reliance on § 1997a for appointment of counsel and to proceed with this civil action is misplaced. Section 1997a provides that the Attorney General has discretionary authority to investigate the conditions of prison facilities and to institute

an action. This Section however does not provide for a private cause of action. See *Wade v. Barbour*, Civ. Act. No. 2:06-cv-31-KS-MTP, 2008 WL 1925173, at *1 n. 3 (S.D. Miss. Apr. 29, 2008). Petitioner's Motion is therefore without merit.

For the foregoing reasons, Petitioner's Motion [ECF No. 16] will be denied. Accordingly,

IT IS HEREBY ORDERED that Petitioner's Motion for Appoint of Counsel [ECF No. 16] is DENIED.

SO ORDERED, this the 11th day of May, 2023.

s/David Bramlette
UNITED STATES DISTRICT JUDGE