

APP A

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,

CR No. 3:17-351-JFA-1

Plaintiff-Respondent.

v.

ORDER

Michael Kenny Carter,

Defendant-Petitioner.

I. INTRODUCTION

This matter is before the Court on Michael Kenny Carter's ("Petitioner" or "Carter") multiple filings before this Court. Carter has filed a Motion to Dismiss for Lack of Jurisdiction (ECF No. 271), Motion for Local Rule 7.06 (ECF No. 274), Motion for Default Judgment against the United States (ECF No. 276), Motion for Hearing for Proof of Jurisdiction (ECF No. 277), and Motion for Reduction in BOP Financial Responsibility (ECF No. 278). This Court has reviewed these filings and determined that a response from the United States is unnecessary, and therefore, this matter is ripe for review.

II. FACTUAL AND PROCEDURAL HISTORY

The procedural history of this case is quite long. However, to demonstrate Carter's incessant (too strong a word?) filings with this Court and this Court's attempt to fully consider and evaluate each filing, it will summarize the history.

To begin, in 2017, Carter pleaded guilty to enticement of a minor, in violation of 18 U.S.C. § 2422. (ECF No. 34). Thereafter, this Court sentenced Carter to a term of imprisonment of 240 months followed by a supervised release term of life. (ECF No. 45).

On October 4, 2018, Carter filed a motion to vacate his conviction and sentence pursuant to 28 U.S.C. § 2255, claiming he received ineffective assistance of counsel. (ECF 63). The Court denied that motion in a written order on January 6, 2020, and granted judgment in favor of the United States. (ECF No. 122).

Then, on February 28, 2022, Carter filed another § 2255 motion, asserting claims of actual innocence, invalid guilty plea, and prosecutorial misconduct. (ECF No. 227). Despite already filing his second § 2255 Motion with this Court, Carter subsequently filed a motion pursuant to 28 U.S.C. § 2244 with the Fourth Circuit which sought permission to file his second § 2255 Motion. *United States v. Winestock*, 340 F.3d 200, 205 (4th Cir. 2003) (citing 28 U.S.C. § 2244(b)(3)) (“[A] prisoner seeking to file a successive application in the district court must first obtain authorization from the appropriate court of appeals.”). On September 21, 2022, the Fourth Circuit Court of Appeals issued an Order denying Carter’s Motion pursuant to § 2244 and declining to grant him authorization to file a second or successive § 2255 motion. (ECF No. 253). On September 23, 2022, this Court also entered an Order which denied his second motion for relief pursuant to § 2255 citing the Fourth Circuit’s decision for support. (ECF No. 254).

On September 27, 2022, Carter filed a Motion seeking reconsideration of this Court’s decision to deny his § 2255 motion (ECF No. 254) and relief from the subsequent judgment entered in this case which dismissed his second petition with prejudice. (ECF Nos. 254 & 255). On October 12, 2022, this Court entered an Order denying Carter’s Motions for Reconsideration. (ECF No. 260).

On October 19, 2022, Carter filed another Motion for Reconsideration asking this Court to reconsider its Order entered on October 12, 2022. (ECF No. 262). On this same day, Carter also filed a Notice of Appeal of Final Judgement with the Fourth Circuit Court of Appeals. (ECF No. 263).

On November 8, 2022, this Court entered an Order denying Carter's second Motion for Reconsideration. (ECF No. 268). In this Order, this Court explicitly explains that Carter's Motion is denied because he has failed to raise new issues or arguments not previously asserted in his Motions which have been considered and dismissed by this Court. *Id.*

On January 13, 2023, the Fourth Circuit issued a Mandate on Carter's appeal which was filed in October dismissing his appeal for failure to prosecute. (ECF No. 270).

On April 3, 2023, Carter filed a Petition for Writ of Mandamus in the Fourth Circuit Court of Appeals. *See In re: Michael Kenny Carter a/k/a Blaze, No. 23-1355.*

Now, Carter has filed the following five Motions with this Court: (1) Motion to Dismiss for Lack of Jurisdiction (ECF No. 271); (2) Motion to Dismiss for Local Rule 7.06 (ECF No. 274); (3) Motion for Default Judgment (ECF No. 276); (4) Motion for Hearing to Order Proof of Jurisdiction (ECF No. 277); (5) Motion for Reduction in BOP Financial Responsibility (ECF No. 278).

III. DISCUSSION

a. Lack of Jurisdiction

Carter has filed a Motion (ECF No. 271) along with a Memorandum in support (ECF No. 272) denying and challenging this Court's jurisdiction in his criminal case. Carter

also filed a Motion for a Hearing to Order Proof of Jurisdiction. (ECF No. 277).

Carter's Motion challenging this Court's jurisdiction is frivolous as this Court retains original jurisdiction over offenses against the laws of the United States pursuant to 18 U.S.C. § 3231. To the extent Carter's arguments do not actually concern the jurisdiction of this court, and instead, focus on the sufficiency of the evidence used to support his conviction, these arguments also fail. First, Carter pled guilty on May 31, 2017, to the charge of enticement of a minor in violation of 18 U.S.C. § 2422(b). (ECF No. 34). Accordingly, this is not a case in which Government presented evidence on the elements of the crime charged for the determination by a jury. Instead, Carter voluntarily pled guilty to Count 1 of the Indictment.

Second, Carter has raised these arguments previously in his other Motions which this Court has considered and dismissed. Because this Court finds his Motion challenging this Court's jurisdiction to be meritless, this Court also finds that a hearing on this issue is unnecessary.

Therefore, Carter's Motions regarding this Court's lack of jurisdiction are denied. (ECF Nos. 271 & 277).

b. Local Rule 7.06

Carter has filed a Motion pursuant to Local Civil Rule 7.06 arguing his Motions should be granted because the Government has failed to file a response. (ECF No. 274). This Court recognizes Carter's reading of the rule is correct, however, such rule does not apply in this instance where Carter's Motions are wholly without merit. As discussed above, Carter's Motions fail to explain how this Court lacked jurisdiction over him during his criminal

proceedings and his arguments related to the sufficiency of evidence asserted against him have been considered and denied.

While this Court has discretion to grant unopposed Motions based on the record before it, this Court declines to exercise such discretion in this instance due to the frivolity of Carter's Motions. Thus, Carter's Motion pursuant to Local Rule 7.06 is denied. (ECF No. 274).

c. Default Against the United States

Carter has filed a Motion for Default Judgment against the United States pursuant to Rule 55(a) of the Federal Rules of Civil Procedure. (ECF No. 276). The basis of Carter's Motion is the Government's failure to satisfy its burden of proving this Court has subject matter jurisdiction over Carter's criminal case. This Court finds this Motion to be wholly without merit.

Rule 55(d) of the Federal Rules of Civil Procedure provides that “[a] default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.” Carter's claim that this Court lacks jurisdiction over his criminal case is not a basis for the entry of default against the United States. Further, in so far as Carter's Motion is another attempt at seeking habeas corpus relief despite him already filing two Motions pursuant to § 2255, a default judgment against the United States is not appropriate in this context. *See, e.g., Quinones-Torres v. United States*, 240 Fed. App'x 876, 878 (1st Cir. 2007) (finding that the appellant was not “entitled to a default judgment simply because the government did not file an opposition to his habeas petition”) (citations omitted); *Gordon v. Duran*, 895

F.2d 610, 612 (9th Cir. 1990) (“The failure to respond to claims raised in a petition for habeas corpus does not entitle the petitioner to a default judgment.”); *United States v. Mendenhall*, 12-CV-0432, 10-CR-0044, 2014 WL 4773970, at *4 (D. Idaho Sept. 24, 2014) (denying motion for default judgment as procedurally improper and “because default judgment is not available in habeas proceedings”); *Ramirez-Morazan v. United States*, 13-CV-329, 11-CR-0018, 2014 WL 3110017, at *4 (E.D.N.C. July 7, 2014) (noting that “a motion for entry of a default judgment” is “not applicable in the context of a § 2255 motion”); *Sagoes v. United States*, 11-CV-1188, 09-CR-0049, 2014 WL 1681596, at *3 (N.D. Ga. Apr. 28, 2014) (“Default judgment is not contemplated in the context of a § 2255 motion, and is never available against the United States unless the claimant produces sufficient evidence to substantiate his claim on the merits.”); *Hasty v. United States*, 13-CV-0270, 09-CR-0855, 2013 WL 6839896 at *2 (D.S.C. Dec. 23, 2013) (finding that although the government did not provide “any excuse for filing its motion well beyond the deadline” default judgment is “not appropriate in habeas action, including § 2255 actions”); *Whyte v. United States*, RDB-12-CV-1141, RDB-10-CR-0212, 2013 WL 1721736, at *4 (D. Md. Apr. 19, 2013) (citing the “Fourth Circuit’s preference for disposition on the merits” in denying default judgment as to a § 2255 petition); *Thompson v. United States*, 09-CV-410, 2010 WL 3782028, at *4 (E.D. Tex. Aug. 23, 2010) (stating that “default judgment is inappropriate even when the Government inexcusably disregards a district court’s orders to respond to a petition” and that “[t]o hold otherwise would improperly place the burden of default on the community at large”).

Therefore, Carter’s Motion for default against the United States is denied. (ECF No.

276).

d. Reduction in BOP Financial Responsibility

Carter's final Motion is entitled, "Motion seeking Reduction of BOP Financial Responsibility." (ECF No. 278). Carter mailed this Motion to this Court for filing with an enclosed check for \$25.00 to be paid towards his restitution amount of \$5,100.00. (ECF No. 45). Carter requests a receipt for such payment and seeks to amend his monthly minimum payment of \$50.00 which has been imposed on him by his case manager within the Bureau of Prisons' Inmate Financial Responsibility Program ("IFRP").

First, this Court is unable to provide Carter with a receipt. Additionally, this Court lacks the authority to amend Carter's payment schedule as set by his case manager within the IFRP. "[T]he amount an inmate must pay under IFRP is a matter entrusted to the Executive Branch, and 'courts are not authorized to override the [BOP's] discretion about such matters, any more than a judge could dictate particulars about a prisoner's meal schedule or recreation.'" *U.S. v. Rush*, 853 F.Supp.2d 159, 162 (D.D.C. April 10, 2012) citing *United States v. Sawyer*, 521 F.3d 792, 794 (7th Cir.2008), *cert. denied*, 555 U.S. 1103, 129 S.Ct. 897, 173 L.Ed.2d 116 (2009); *see also United States v. Baldwin*, 563 F.3d 490, 492 (D.C.Cir.2009) (per curiam) (expressing doubt as to the district court's authority to give "specific instructions" regarding an inmate's payments under IFRP). "[T]he sentencing court merely permits plaintiff to pay his criminal fine, due immediately, through the BOP's financial program." *Summersett v. Baucknecht*, 496 F.Supp.2d 636, 640 (D.S.C. June 4, 2007). As stated in 28 C.F.R. § 545.11, once a Court orders a defendant to pay a fine, the "unit staff" is responsible for "help[ing] that inmate develop a financial plan..."

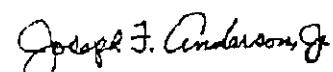
Therefore, Carter's Motion is denied, and he is instructed to speak with his case manager regarding the terms of his payment schedule as this Court lacks authority to assist him in this regard.

IV. CONCLUSION

For the reasons stated above, Carter's Motions are denied. (ECF Nos. 271, 274, 276, 277, & 278).

IT IS SO ORDERED.

May 2, 2023
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge

APP B

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,

CR No. 3:17-351-JFA-1

Plaintiff-Respondent.

v.

ORDER

Michael Kenny Carter,

Defendant-Petitioner.

This matter is before the Court on Michael Kenny Carter's ("Petitioner" or "Carter") *pro se*¹ Motion for Reconsideration (ECF No. 282). For the reasons stated below, the Court denies Carter's Motions.

This is Petitioner's third motion for reconsideration before this Court. (ECF Nos. 254, 260, & 282). Although the motions are seeking reconsideration on different motions before this court, the premise is the same—this Court lacks jurisdiction over Petitioner and therefore, this Court's Orders are "null and void" and his conviction should be vacated.

Like in this Court's prior two Orders, this Court reminds Petitioner of the grounds under which a district court may grant a motion for reconsideration under Rule 59(e) which are the following: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993).

¹ Because the Defendant/Petitioner is acting *pro se*, the documents he has filed in this case are held to a less stringent standard than if they were prepared by a lawyer and are thus construed liberally. See *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972).

However, “mere disagreement with the court’s ruling does not warrant a Rule 59(e) motion.” *LaFleur v. Dollar Tree Stores, Inc.*, No. 2:12-cv-00363, 2014 WL 12659898, at *1, 2014 U.S. Dist. LEXIS 198160 at *4 (E.D. Va. Mar. 24, 2014) (citing *Hutchinson*, 994 F.2d at 1082). Finally, a district court’s decision on a motion for reconsideration is reviewed “for abuse of discretion[,]” and the Fourth Circuit has noted that granting such a motion under Rule 59(e) “is an extraordinary remedy which should be used sparingly.” *Pacific Ins. Co. v. Am. Nat’l Fire Ins. Co.*, 148 F.3d 396, 402–03 (4th Cir. 1998) (internal quotations omitted).

In Carter’s Motion for Reconsideration, he seeks reconsideration of this Court’s Order (ECF No. 280) which denied his motion to dismiss to dismiss for lack of jurisdiction (ECF No. 271) and was entered on the docket on May 2, 2023. Carter continues to argue that this Court does not have jurisdiction over him and this Court’s Order is “null and void.” However, Carter’s argument is patently false. In this Court’s May 2nd Order, it walked through why this Court has jurisdiction over Petitioner. This Court will not redo its analysis. For a motion for reconsideration, Petitioner must have demonstrated he satisfied one of the three bases recognized by the Fourth Circuit under Rule 59(e) which would allow this Court to grant the instant motion and overturn its previous Order. Notwithstanding this standard being articulated in two prior Orders, Petitioner has failed to point to a change in the law or present this Court with new evidence. Although he argues this Court’s authority over him without jurisdiction is an injustice, Carter’s argument is patently false.

For the third time, this Court does have jurisdiction over him, and thus, his motion

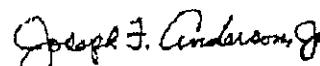
for reconsideration is denied. (ECF No. 282).

II. CONCLUSION

Accordingly, Carter's motion for reconsideration (ECF No. 282) is denied.

IT IS SO ORDERED.

May 24, 2023
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge