

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-11134

REGINALD BURRELL,

Petitioner-Appellant,

versus

WARDEN,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Alabama
D.C. Docket No. 1:21-cv-00025-TFM-B

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Order of the Court

23-11134

ORDER:

To merit a certificate of appealability, a movant must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Because Reginald Burrell has failed to make the requisite showing, his motion for a certificate of appealability is DENIED.

/s/ Robert J. Luck

UNITED STATES CIRCUIT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

REGINALD BURRELL,)
Petitioner,)
vs.) CIV. ACT. NO. 1:21-cv-25-TFM-B
SHARON LANGHAM,)
Respondent.)

MEMORANDUM OPINION AND ORDER

Pending before the Court is Petitioner's *Motion for Relief from Judgment or Order Pursuant to Rule 60(b)*, Fed. R. Civ. P. (Doc. 60, filed 3/9/23). Petitioner seeks relief from the Memorandum Opinion and Order and the accompanying Judgment entered in this case on July 29, 2022 which adopted the Report and Recommendation of the Magistrate Judge. *See* Docs. 45, 52, 53. Having reviewed the motion, the Court finds that no response is necessary prior to the issuance of this opinion.

Fed. R. Civ. P. 60(b) provides a party, on motion, relief from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b)(1)-(6). A motion under Rule 60(b) must be made within a reasonable time, and for reasons (1), (2), and (3) no more than a year after the entry of judgment. FED. R. CIV. P.

60(c)(1).

The current motion seems to rely mostly on Rule 60(b)(2) stating that the Magistrate Judge and the undersigned relied upon a fabricated amount of money found by the Montgomery County Circuit Court when it denied Burrell's motion to proceed *in forma pauperis*. *See* Doc. 45 at 12 n.

8. The problem here is that Petitioner relies upon "newly discovered evidence." Putting aside that this is a habeas proceeding where it did not proceed to trial, the Court cannot find that with reasonable diligence this information could not have been previously discovered since it relates back to his original state habeas proceedings and findings made by that Court..

Reviewing the rest of his motion, the Court presumes that it is brought under Rule 60(b)(6) – i.e. any other reason that justifies relief. The majority of the arguments focus on his disagreement with the Court's findings and his opinion that they are erroneous. After a review of the current motion and the underlying Memorandum Opinion/Report and Recommendation, the Court finds no basis to changes its original ruling.

Finally, the Court finds that over eight months have passed since the Court entered its Memorandum Opinion and Judgment and almost eleven months since the entry of the Report and Recommendation. As a result, in this particular case on these facts, the Rule 60(b) motion was not made within a reasonable period of time which alone is sufficient cause for denial.

Accordingly, Petitioner's *Motion for Relief from Judgment or Order Pursuant to Rule 60(b), Fed. R. Civ. P.* (Doc. 60) is **DENIED** and Petitioner is not entitled to relief pursuant to Fed. R. Civ. P. 60. The Clerk of Court is **DIRECTED** to provide a copy of this order to the Eleventh Circuit Court of Appeals.

DONE and ORDERED this the 16th day of March 2023.

s/Terry F. Moorer
TERRY F. MOORER
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

REGINALD BURRELL,)
Petitioner,)
vs.) CIV. ACT. NO. 1:21-cv-25-TFM-B
SHARON LANGHAM,)
Respondent.)

ORDER

On July 29, 2022, The Court issued its Memorandum Opinion and Order adopting the Report and Recommendation of the Magistrate Judge and issuing the Judgment. *See* Docs. 52, 53. On August 18, 2022, Petitioner appealed those orders. *See* Doc. 54. Eight months later, Petitioner filed a Motion for Relief from Judgment or Order pursuant to Rule 60(b). *See* Doc. 60. On March 16, 2023, the Court denied to Rule 60 motion and found Petitioner was not entitled to relief. *See* Doc. 61. On April 6, 2023, Petitioner appealed the denial of the Rule 60 motion. *See* Doc. 62.

On November 14, 2023, the Eleventh Circuit issued a limited remand “so that the district court may consider whether a COA should issue as to the denial of the Rule 60(b) motion. *See* Doc. 68.

This Court should issue a certificate of appealability only if the petitioner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Where a district court has rejected a petitioner’s constitutional claims on the merits, the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). For the reasons stated in the July 29, 2022 Memorandum Opinion and Order (Doc. 52) and again in the March 16,

2023 Memorandum Opinion and Order (Doc. 61), the Court is unable to find that the petitioner has demonstrated that a reasonable jurist would disagree with the rulings issued on the claims. More to the point as to the ruling on the Rule 60 motion, as discussed in the opinion and order denying the motion, it was not made in a reasonable period of time, the information presented does not change the basis for the original ruling, and the Court was unable to find that with reasonable diligence this supposed “newly discovered evidence” could not have been previously discovered. *See* Doc. 61 at 1-2. Therefore, the Court finds that Burrell is not entitled to a Certificate of Appealability.

The Clerk of Court is **DIRECTED** to provide a copy of this order to the Eleventh Circuit Court of Appeals.

DONE and **ORDERED** this the 14th day of November 2023.

s/Terry F. Moorer
TERRY F. MOORER
UNITED STATES DISTRICT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**