Supreme Court, U.S.
FILED
AUG 17 2023
OFFICE OF THE CLERK

23A185 August 17th, 2023

Anthony Andrews
15965-056
FPC, P.O. Box 1000
Butner, N.C. 27509

Case No ______

Justice John Roberts

clerks office
US Supreme court
1 First street, NE
Washington, D.C. 20530

Application to STAY the Enforcement of Judgment
28 USC 2101 (f)
S. CT. Rule 23

Now Comes, Anthony Andrews before the chief Justice, John Roberts in an Application to stay the enforcement entered by the 4th Circuit on March 22nd, 2023 in Case No 22-7332, a Consolidated appeal of post conviction criminal under FSA-404 (b) and a Petition for Writ of Mandamus. (See Ex. 1). The 4th Circuit denied both rehearing and rehearing en banc on May 1st 2023 as well as a stay of mandate under F.R.A.P. 41. See Ex. 2 and 3. A Motion was filed to extend the certiorari time for 60 days was granted on June 15th, 2023 until Sept. 28th, 2023. See Ex. 4. The court has jurisdiction under 28 USC 2101 (f) to entertain this application.

RECEIVED
AUG 22 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

STATEMENT FOR STAY
And
Question for CASE.

1). Applicant filed before the district court in Case N° 7:16-cr-30-D, A Non-Covered offense for FSA-404(b) of which A 132 month Sentence was imposed for oxycodone Conspiracy. However in Case N° 7:01-cr-27-M a Supervised Release violation for crack Possession in 2001, A covered offense under FSA 404(b), These two Sentences Are "FBOP" Aggregated into one 144 months Sentence. The gov't responded to my August 1st 2022 motion to reduce under FSA 404(b) (DE #603) (motion) Response (DE # 610) (See Ex 5), After my reply the district court by text order denied (DE # 603), FSA 404(b) Motion to Reduce Sentence regarding First step Act 404(b) on 11/7/22. See (Ex. 6). This is Procedural and Substantive Due Process under the 5th Amendment due to Concepcion v U.S. 142, SCT 2389 (2022). Due to This 144 month Sentence is Aggregated either Judge Dever in 7:16-cr-30-D, or Judge Meyers in 7:01-cr-27-M, Can reduce the Sentence under FSA-404(b).

Question

Does Peyton v. Rowe, 391 US 54 (1968) Apply to the Construction of An Aggregate Sentence for the Purpose of Adjudicating Release under 18 USC 3582(c), FSA-404(b) proceedings?

Andrews was Sentenced in Case No 7:16-cr-30-D-3 to 132 months on 11/15/2018. On August 9th 2019 my Supervised Release was revoked and I was Sentenced to 12 months consecutive. The FBOP Aggregated them into one 144 month Sentence. I have two federal judges within the Eastern District of N.C. Judge Devers And Judge Meyers. (See Ex. 9)

It is undisputed that the 12 month Sentence is Aggregated with the 132 month Sentence. Court typically view consecutive Sentences like those imposed here "in the aggregate, not discrete segments. Garlotte v. Fordice, 515 US 39 (1995) (challenge under 28 USC 2254). See Also Bernard v. Garraghty, 934 F.2d 52 (4th Cir. 1991) (Peyton sets forth quite clearly the law concerning the custody status of Prisoners who are Serving consecutive Sentences; for Such Prisoners, custody

for habeas purposes is defined not by any one particular sentence, but by the Aggregate of the Sentences. See US v. Hammond, No CR-02-294 (BAH) 2020 US Dist. Lexis 67331 (D.D.C. 4/16/2020) (The federal compassionate Release provision is better read as a procedural mechanism that applies to all sentences imposed by federal Courts. No district court nor 4th Circuit has opined this issue.

The 4th Circuit affirmed the district courts "Procedural and Substantive Due Process of the 5th Amendment by not following this courts ruling under Concepción. The district court did not recalculate the Aggregated Sentence of 144 months, NO 3553 (a) factors, only a text order denying the FSA 404(b). I Ask for stay of Judgment 22-7332 affirmed on March 22nd, 2023.

2.) STAY of Judgment in 22-1086, Petition for Writ of Mandamus, 3/22/23 due to Procedural and Substantive Due Process Violations under the 5th Amendment. (consolidated Judgments) (See EX 10 and 11) (DE # 598 and 611) (gov's responses to DE # 552) (7:16-cr-30-D-3) (E.D.N.C.) (Judge DEVER)

Applicant in Case No 7:16-cr-30-D-3 filed a "Petition for Writ of Mandamus for "undue delay" for filed post-conviction motions in DE # 592. The Motion contained A Motion to Disqualify Judge Devers under 28 USC 455(a) for impartiality, "not 144, A motion to fully Seal DE # 480 and 507 and a challenge to standing order 09-30-02 Within the (E.D.N.C) As litigation continued the Atty for the govt in DE # 598 and 611 failed to Seal their responses in violation of the Judicial Conference Privacy Policy. I then on Oct. 24th, 2022 filed A Motion to disqualify AUSA B. Bentr. He responded back in (DE # 616 filed on 11/01/22. See Ex 7). The district court committed "procedural error by not having a hearing or Addressing the motion to disqualify the AUSA in its 11/7/22 text order, nor did it Address the 28 USC 455(a) motion to recuse for "impartiality. The 4th Circuit in 22-7332 "did not remand" on either disqualification of the Court nor prosecutor. Judge Dever waited until after All litigation in 22-7332 ended on 5/1/23 to finally deny the motion to

disqualify Apsa B. Renter on 5/9/23.
An appeal is filed with the 4th Circuit
for this issue. See Ex 8 (5/9/23 order)

Reason to Grant
Application

The 4th Circuits Judgment in 22-7332
violates the constitution's 5th Amendment
Due Process clause. The 4th circuit in
clarity sought not to remand due to
the issue brought before it. It is clear
that Andrews Sentences are "Aggregated"
into one 144 months Sentence and either
Judge may Reduce the Aggregate Sentence.
In this case, the Aggregate
Covered offense, 7:01-cr-27-M is before
the 4th circuit on a FSA 404-(b) and
Compassionate Release denial in 23-6281
I have to file certiorari on this
question by 9/28/23. The 4th circuit may
not have issued its opinion in 23-6281
by then. Due to the Procedural and
Substantive Due Process violations under
the 5th Amendment in 22-7332, I request
a stay of the enforcement of the Judgment
under 28 USC 2101(f). Respectfully

#15065-056

Certificate of Service

I Anthony Andrews do hereby Certify that I have Placed an exact copy of the foregoing "Application to stay the enforcement of Judgment under 28 USC 2101(f) to the below respondent, first-class postage Prepaid US Mail this August 17th, 2023, Priority Mail Service # 9114 9022 0078 9733 8951 44

Below Respondent
Solicitor General of the US.
Rm 5616
Dept of Justice
950 Pennsylvania Ave NW.
Washington, D.C. 20530

[signature] # 15965-056
Anthony Andrews
15965-056
FPC, P.O. Box 1000
Butner, NC 27509

* USPS Priority # to clerks office *

9114 9022 0078 9733 8951 44

(Ex. 1)

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7332

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTHONY ANDREWS, a/k/a Wheat,

Defendant – Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. James C. Dever III, District Judge. (7:16-cr-00030-D-3)

No. 23-1086

In re: ANTHONY ANDREWS, a/k/a Wheat,

Petitioner.

On Petition for Writ of Mandamus. (7:16-cr-00030-D-3)

Submitted: March 14, 2023 Decided: March 22, 2023

Before THACKER and HARRIS, Circuit Judges, and MOTZ, Senior Circuit Judge.

No. 22-7332, affirmed; No. 23-1086, petition denied by unpublished per curiam opinion.

Anthony Andrews, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In No. 22-7332, Anthony Andrews appeals the district court's order disposing of several postjudgment motions. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *United States v. Andrews*, No. 7:16-cr-00030-D-3 (E.D.N.C. Nov. 7, 2022). While we grant Andrews' motion to seal the informal brief, we deny his motions to proceed by pseudonym and to consolidate.

In No. 23-1086, Andrews petitions for a writ of mandamus, alleging that the district court has unduly delayed in ruling on two motions—one challenging a standing order and the other seeking to disqualify the Assistant United States Attorney (AUSA) assigned to this case. However, the district court order on appeal in No. 22-7332 disposed of Andrews' challenge to the standing order. Thus, this request is moot.

As for the motion seeking the disqualification of the AUSA, the district court docketed Andrews' motion on October 24, 2022. Thus, the present record does not reveal undue delay in the district court.* Accordingly, we deny the mandamus petition. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

No. 22-7332, AFFIRMED;
No. 23-1086, PETITION DENIED

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* We note that while it appears that the district court intended to dispose of this motion in its November 7, 2022, order, that order did not rule on this motion. In light of the voluminous filings submitted by Andrews, we do not fault the district court for overlooking this one discrete request for relief.

(Ex. 2)

FILED: May 1, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7332 (L)
(7:16-cr-00030-D-3)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ANTHONY ANDREWS, a/k/a Wheat

Defendant - Appellant

No. 23-1086
(7:16-cr-00030-D-3)

In re: ANTHONY ANDREWS, a/k/a Wheat

Petitioner

O R D E R

The court denies the petitions for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petitions for rehearing en banc.

Entered at the direction of the panel: Judge Thacker, Judge Harris, and Senior Judge Motz.

For the Court

/s/ Patricia S. Connor, Clerk

(Ex. 3)

FILED: May 1, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7332 (L)
(7:16-cr-00030-D-3)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ANTHONY ANDREWS, a/k/a Wheat

Defendant - Appellant

ORDER

Upon consideration of submissions relative to the motion to stay mandate, the court denies the motion.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

(Ex. 4)

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

June 15, 2023

Mr. Anthony Andrews
Prisoner ID 15965-056
FCI Butner
P.O. Box 1000
Butner, NC 27509

Re: Anthony Andrews
v. United States
Application No. 22A1086

Dear Mr. Andrews:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to The Chief Justice, who on June 15, 2023, extended the time to and including September 28, 2023.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by

Rashonda Garner
Case Analyst

(Ex. 5)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

NO. 7:16-CR-30-D

UNITED STATES OF AMERICA	)	
	)	GOVERNMENT'S RESPONSE TO
v.	)	MOTION FOR COMPASSIONATE
	)	RELEASE – FIRST STEP ACT
ANTHONY ANDREWS	)	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, respectfully responds to Defendant's Motion for Compassionate Release-First Step Act and motions for reconsideration following the ruling from the Fourth Circuit. The defendant claims that he should get a sentence reduction in this case because the sentencing guidelines and mandatory minimum sentence in his 2001 case and the subsequent supervised release imprisonment term would be less if he were sentenced today (DE#603). The defendant claims that he is owed time for that sentence so he should have this sentence reduced since the supervised release violation and this sentence were done in the aggregate. (DE#603). The Government contends that even if the defendant could have his sentence reduced based upon this argument because of his lengthy criminal history, likelihood of recidivism and the nature of the criminal conduct this request should be denied.

Facts and Procedural History

On August 3, 2010, Congress enacted the Fair Sentencing Act of 2010 ("Fair Sentencing Act"), Pub. L. No. 11-220, 124 Stat. 2372, reducing the statutory penalties for crack offenses. The Fair Sentencing Act, which was not retroactive, established new crack thresholds for mandatory minimum and maximum sentences. For example, the Fair Sentencing Act requires a finding of at least 280 grams of crack, rather than 50 grams of crack, to impose a 10 year minimum imprisonment and a maximum of life imprisonment. See 21 U.S.C. § 841(b)(1)(A).

On October 11, 2016, the Defendant plead guilty to conspiracy to manufacture, distribute, dispense and possess with the intent to distribute a quantity of Endocet, Methadone, Oxycodone OxyContin and Oxymorphone, in violation of 21 U.S.C. § 841(b)(1)(c) and 846. (D.E. 451).

According to Defendant's original Presentence Investigation Report ("PSR"), the defendant following a lengthy federal prison sentence for drug trafficking became involved in this conspiracy. (D.E. 451 ¶6). The defendant and his girlfriend recruited people to fraudulently obtain prescriptions from a doctor and his "pill mill". The defendant was also responsible for distributing pills in the Lumberton North Carolina area. (D.E. 451 ¶6). The defendant was involved in this conduct from 2012 until March 2016. (D.E. 451 ¶9). The estimated street value of the controlled substances distributed by the defendant was in excess of $388,500. (D.E. 451 ¶10). The PSR determined a total offense level of 31 and a criminal history category of IV and

determined a guideline imprisonment range of 151 months' to 188 months' imprisonment. (D.E. 451 ¶20).

On November 15, 2018, the Court sentenced the defendant to 133 months. (DE# 469).

The Defendant has filed numerous appeals in this case. (D.E. 472, 515, 519. 539, 541, 560).

On December 21, 2018, Congress enacted the First Step Act of 2018 ("First Step Act"), Pub. L. No. 115-391, 132 Stat. 5194, allowing a court, in its discretion, to impose a reduced sentence for offenses committed before August 3, 2010 and for which the statutory penalties were modified by section two or three of the Fair Sentencing Act of 2010.

On August 4, 2022, the Fourth Circuit remanded the defendant's request for a sentencing reduction to the District Court based upon his supplemental filing for compassionate release-First Step Act due to a change in the law since his 2001 conviction. The Fourth Circuit said the District Court had not considered. (DE# 603-1)

The defendant filed a motion to reduce his sentence based upon the First Step Act on August 1, 2022. (DE# 603). The defendant filed an amended motion on September 23, 2022. (DE# 606). The defendant claims that he should be given a sentence reduction in this case because his sentence in 2001 would be different now and therefore he should be credited for time in that case to this sentence. (DE# 606).

Discussion

I. The Court Should Use Its Discretion to Deny Defendant's Motion.

Even if this Court determines Defendant is eligible for a sentence reduction, Section 404(c) of the Act makes clear that a sentence reduction is discretionary. See First Step Act of 2018, Pub. L. No. 115-391, § 404(c), 132 Stat. 5194, 5222 (2018) ("Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section."). In this case, the Court should use its discretion to deny a reduction of Defendant's sentence.

The defendant took part in a long-term conspiracy to distribute controlled substance. The defendant was responsible for distributing controlled substance with a street value of more than $3800,000. (D.E. 451 ¶10). The defendant was on federal supervised release for distribution of cocaine and cocaine base at the time he was involved in the criminal conspiracy before this court. (D.E. 451 ¶12). The defendant in that prior case was responsible for distributing more than 12 kilograms of cocaine and a quantity of cocaine base. (D.E. 451 ¶12). The defendant served a 188-month sentence for that case. The defendant engaged in the conduct in this case within a short period of after being placed on supervised release. The defendant even tried to have his supervised release terminated early while he was engaged in this conduct. (D.E. 451 ¶12). Prior to this the defendant was convicted of conspiracy to possess with the intent to distribute and distribute cocaine and money laundering. The defendant distributed more than 31 kilograms of cocaine base. The defendant

received a 168-month sentence in 1996. (D.E. 451 ¶12). The defendant sentence was modified to 60 months in 1998. He was released to supervised release in 1999. The defendant's supervision was revoked in 2001. (D.E. 451 ¶12). From 1996 until the present the defendant has either been in federal custody or on federal supervised release which ultimately violated. The defendant is the definition of a recidivist.

While the law may no longer consider him to be a career offender, his action tells a different story. The defendant has been a long-term drug dealer who has violated federal supervised release twice. The defendant has offered nothing to this court to show any remorse for his actions or reasons to believe he will not engage in this conduct in the future.

The main argument Defendant offers for reducing his sentence is that he showed be credited for time he got the second time he violated his supervised release because if he violated that law today, he would have a different guideline and mandatory minimum. Which is only relevant because he was sentenced to his supervised release violation at the same time, he was being sentenced for his third federal conviction.

(Remainder of this page intentionally left blank.)

Conclusion

For all of the above-stated reasons, the Court should exercise its sound discretion to deny any relief pursuant to the First Step Act.

Respectfully submitted, this 11th day of October, 2022.

MICHAEL F. EASLEY, JR.
United States Attorney

BY: */s/ Timothy Severo*
TIMOTHY SEVERO
Assistant United States Attorney
Criminal Division
300 North 3rd street Suite 120
Wilmington NC 28401
Telephone: (919) 856-4530
E-mail: tim.severo@usdoj.gov
NC Bar No. 19621

CERTIFICATE OF SERVICE

This is to certify that I have this 11th day of October , 2022, served a copy of the foregoing Government's Response by USPS Certified Mail.

BY: */s/ Timothy Severo*
TIMOTHY SEVERO
Assistant United States Attorney
Criminal Division
300 North 3rd street Suite 120
Wilmington NC 28401
Telephone: (919) 856-4530
E-mail: tim.severo@usdoj.gov
NC Bar No. 19621

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:16-CR-30-D

UNITED STATES OF AMERICA	)	
	)	
v.	)	NOTICE OF APPEARANCE
	)	
ANTHONY ANDREWS	)	

NOW comes the United States of America, by and through the United States Attorney for the Eastern District of North Carolina, and gives notice to this Honorable Court of assignment of the undersigned Assistant United States Attorney as counsel for the Government in the above-referenced case.

Respectfully submitted, this the 11th day of October, 2022.

MICHAEL F. EASLEY, JR.
United States Attorney

BY: /s/ Timothy Severo

TIMOTHY SEVERO
Assistant United States Attorney
United States Attorney's Office
300 N. 3rd Street, Suite 120
Wilmington, NC 28401
Telephone: (919) 856-4530
Fax: (919) 856-4487
Email: tim.severo@usdoj.gov
NC State Bar No. 19621

CERTIFICATE OF SERVICE

This is to certify that I have this 11th[th] day of October, 2022, served a copy of the foregoing Government's Notice of Appearance upon the defendant by electronically filing the foregoing with the Clerk of Court, using the CM/ECF system which will send notification to all attorneys of record in this matter.

BY: /s/ Timothy Severo
TIMOTHY SEVERO
Assistant United States Attorney
United States Attorney's Office
300 N. 3rd Street, Suite 120
Wilmington, NC 28401
Telephone: (919) 856-4530
Fax: (919) 856-4487
Email: tim.severo@usdoj.gov
NC State Bar No. 19621

(Ex. 6)

U.S. District Court

EASTERN DISTRICT OF NORTH CAROLINA

Notice of Electronic Filing

The following transaction was entered on 11/7/2022 at 4:32 PM EST and filed on 11/7/2022

Case Name: USA v. Dixon et al

Case Number: 7:16-cr-00030-D

Filer:

Document Number: 617

Docket Text:

ORDER as to Anthony Andrews (3) denying [603] Motion to Reduce Sentence regarding First Step Act - Section 404 ; granting [608] [613] [614] Motion to Seal Document; and denying [615] Motion to Stay. Signed by District Judge James C. Dever III on 11/7/2022. (Jennings, A.)

(Ex. 7)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:16-cr-0030-D-3

UNITED STATES OF AMERICA,	)	
	)	
	)	
v.	)	RESPONSE IN OPPOSITION TO
	)	DEFENDANT'S MOTION TO
ANTHONY ANDREWS,	)	DISQUALIFY
	)	
Defendant.	)	

In his response, Defendant alleges the undersigned should be disqualified and sanctioned for various reasons. His motion should be denied.

In the United States' recently filed response to Defendant's numerous motions, the legal issues argued therein were not based on, and did not discuss or suggest, anything that would warrant sealing. Rather, the response discussed both whether he was legally entitled to the relief sought in his motions and whether he could make the requisite showing for relief. See [D.E. 611]. Defendant's case is a matter of public record. The United States' was not under an order to file a sealed response. The United States' response was not subject to automatic sealing under 09-SO-2. The United States' response did not disclose any personal identifiers. Indeed, the United States made conscious efforts to ensure that its response did not reference anything that needed to be sealed.

Simply put, whether the United States' files sealed responses to Defendant's motions is simply not dictated by Defendant's whims or the collateral issues intentionally raised by his multitude of motions. Defendant's current dissatisfaction

with the procedural posture of this case fails to establish any grounds to disqualify the undersigned or issue any sanctions. His motion should, therefore, be denied.

Respectfully submitted this 1st day of November 2022.

MICHAEL F. EASLEY, JR
United States Attorney

By: /s/ Rudy E. Renfer
RUDY E. RENFER
Assistant United States Attorney
Civil Division
150 Fayetteville Street
Suite 2100
Raleigh, NC 27601
Telephone: (919) 856-4530
Facsimile: (919) 856-4821
Email: rudy.e.renfer@usdoj.gov
N.C. Bar No. 23513
Attorney for United States of America

CERTIFICATE OF SERVICE

I do hereby certify that I have this 1st day of November 2022, served a copy of the foregoing upon the below-listed party or parties electronically using the CM/ECF system or by placing a copy of the same in the U.S. Mail, addressed as follows:

Anthony Andrews
#15965-056
FCI Butner Medium I
Federal Correctional Institution
P.O. Box 1000
Butner, NC 27509

By: /s/ Rudy E. Renfer

RUDY E. RENFER
Assistant United States Attorney
Civil Division
150 Fayetteville Street
Suite 2100
Raleigh, NC 27601
Telephone: (919) 856-4530
Facsimile: (919) 856-4821
Email: rudy.e.renfer@usdoj.gov
N.C. Bar No. 23513
Attorney for United States of America

(Ex. 8)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:16-CR-30-D

UNITED STATES OF AMERICA,	)	
	)	
v.	)	**ORDER**
	)	
ANTHONY ANDREWS,	)	
	)	
Defendant.	)	

Anthony Andrews moves to "disqualify" Assistant United States Attorney Rudy E. Renfer based on a lawsuit Andrews filed against Renfer and to sanction Renfer for filing two unsealed responses to Andrews's numerous then-pending motions. See [D.E. 613]. The court has considered the motion under the governing standard. See, e.g., Pub. L. No. 105-119, § 617, 111 Stat. 2440, 2519 (1997), reprinted in 18 U.S.C. § 3006A, historical and statutory notes; 28 U.S.C. § 528; United States v. Bey, 781 F. App'x 505, 509 (7th Cir. 2019) (unpublished); United States v. Kahre, 737 F.3d 554, 575 (9th Cir. 2013) (per curiam); In re 1997 Grand Jury, 215 F.3d 430, 435 nn.7–8 (4th Cir. 2000); United States v. Heldt, 668 F.2d 1238, 1276–77 & n.80 (D.C. Cir. 1981) (per curiam). The motion [D.E. 613] is frivolous and is DENIED.

SO ORDERED. This 9 day of May, 2023.

JAMES C. DEVER III
United States District Judge

(Ex. 9)

REGNO..: 15965-056 NAME: ANDREWS, ANTHONY

FBI NO...........: 355348FA5 DATE OF BIRTH: 08-16-1965 AGE: 57
ARS1.............: BUT/A-DES
UNIT.............: 6 SCP QUARTERS.....: F05-011L
DETAINERS........: NO NOTIFICATIONS: NO

FSA ELIGIBILITY STATUS IS: ELIGIBLE

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.

HOME DETENTION ELIGIBILITY DATE....: 01-17-2025

FINAL STATUTORY RELEASE FOR INMATE.: 07-17-2026 VIA GCT REL
WITH APPLIED FSA CREDITS.: 365 DAYS
THE INMATE IS PROJECTED FOR RELEASE: 07-17-2025 VIA FSA REL

---------------------CURRENT JUDGMENT/WARRANT NO: 040 ------------------------

COURT OF JURISDICTION...........: NORTH CAROLINA, EASTERN DISTRICT
DOCKET NUMBER...................: 7:16-CR-30-3-D
JUDGE...........................: DEVER
DATE SENTENCED/PROBATION IMPOSED: 11-15-2018
DATE COMMITTED..................: 06-28-2019
HOW COMMITTED...................: US DISTRICT COURT COMMITMENT
PROBATION IMPOSED...............: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED.:	$100.00	$00.00	$00.00	$00.00

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: $00.00

------------------------CURRENT OBLIGATION NO: 010 ---------------------------
OFFENSE CODE....: 391 21:846 SEC 841-851 ATTEMPT
OFF/CHG: 21:846, 21:841(B)(1)(C) CONSPIRACY TO MANUFACTURE, DISTRIBUTE,
DISPENSE, AND POSSESS WITH INTENT TO DISTRIBUTE A QUANTITY OF
ENDOCET, METHADONE, OXYCODONE, OXYCONTIN, AND OXYMORPHONE

SENTENCE PROCEDURE.............: 3559 PLRA SENTENCE
SENTENCE IMPOSED/TIME TO SERVE.: 132 MONTHS
TERM OF SUPERVISION............: 3 YEARS
DATE OF OFFENSE................: 03-16-2016

REGNO..: 15965-056 NAME: ANDREWS, ANTHONY

----------------------CURRENT JUDGMENT/WARRANT NO: 050 -----------------------

COURT OF JURISDICTION...........: NORTH CAROLINA, EASTERN DISTRICT
DOCKET NUMBER...................: 7:01-CR-27-1BO
JUDGE...........................: BOYLE
DATE SENTENCED/PROBATION IMPOSED: 11-05-2001
DATE SUPERVISION REVOKED........: 08-09-2019
TYPE OF SUPERVISION REVOKED.....: REG
DATE COMMITTED..................: 09-20-2019
HOW COMMITTED...................: COMMIT OF SUPERVISED REL VIOL
PROBATION IMPOSED...............: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED.:	$100.00	$00.00	$9,700.00	$00.00

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: $00.00

-------------------------CURRENT OBLIGATION NO: 010 ---------------------------
OFFENSE CODE....: 409 21:841 & 846 SEC 841-851
OFF/CHG: 21:841(A)91) DISTRIBUTION OF COCAINE BASE (CRACK)

SENTENCE PROCEDURE.............: SUPERVISED RELEASE VIOLATION PLRA
SENTENCE IMPOSED/TIME TO SERVE.: 12 MONTHS
RELATIONSHIP OF THIS OBLIGATION
TO OTHERS FOR THE OFFENDER....: CS 040/010/040
DATE OF OFFENSE................: 11-01-2000

REGNO..: 15965-056 NAME: ANDREWS, ANTHONY

-------------------------CURRENT COMPUTATION NO: 040 --------------------------

COMPUTATION 040 WAS LAST UPDATED ON 09-10-2019 AT DSC AUTOMATICALLY
COMPUTATION CERTIFIED ON 09-11-2019 BY DESIG/SENTENCE COMPUTATION CTR

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
CURRENT COMPUTATION 040: 040 010, 050 010

DATE COMPUTATION BEGAN..........: 11-15-2018
AGGREGATED SENTENCE PROCEDURE...: AGGREGATE GROUP 800 PLRA
TOTAL TERM IN EFFECT............: 144 MONTHS
TOTAL TERM IN EFFECT CONVERTED..: 12 YEARS
AGGREGATED TERM OF SUPERVISION..: 3 YEARS
EARLIEST DATE OF OFFENSE........: 11-01-2000

JAIL CREDIT.....................: FROM DATE THRU DATE
04-26-2016 11-14-2018

TOTAL PRIOR CREDIT TIME.........: 933
TOTAL INOPERATIVE TIME..........: 0
TOTAL GCT EARNED AND PROJECTED..: 648
TOTAL GCT EARNED................: 378
STATUTORY RELEASE DATE PROJECTED: 07-17-2026
ELDERLY OFFENDER TWO THIRDS DATE: 04-26-2024
EXPIRATION FULL TERM DATE.......: 04-25-2028
TIME SERVED.....................: 7 YEARS 3 MONTHS 13 DAYS
PERCENTAGE OF FULL TERM SERVED..: 60.6
PERCENT OF STATUTORY TERM SERVED: 71.2

PROJECTED SATISFACTION DATE.....: 07-17-2025
PROJECTED SATISFACTION METHOD...: FSA REL
WITH FSA CREDITS INCLUDED...: 365

REMARKS.......: 07-17-19:COMP ENTRD/CASE NO 7:01CR27-1 HAS BEEN APPEALED C/SIG
09-10-19:CS COMP ENTRD/SJW 050 C/SIG.

G0000 TRANSACTION SUCCESSFULLY COMPLETED

(Ex. 10)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:16-cr-00030-D-3

UNITED STATES OF AMERICA v. ANTHONY ANDREWS, Defendant.	))))))))	OMNIBUS RESPONSE TO DEFENDANT'S MOTIONS AT D.E. 592, 593, 594

NOW COMES the United States of America, by and through the United States Attorney for the Eastern District of North Carolina, to hereby respond to Defendant's motions at Docket Entry ("D.E.") 592, 593, and 594. While difficult to discern, it appears that Defendant is requesting in D.E. 592 i) that Docket Entries 480, 507, and 511 be fully sealed and his name replaced with a pseudonym, ii) vacatur of Standing Order 09-SO-2 related to sealing plea agreements and substantial assistance motions, iii) recusal of the Court. Also, while difficult to discern, he appears to request in D.E. 593 an order sealing the motion at D.E. 592. Lastly, while difficult to discern, it appears in D.E. 594 that he request a nunc pro tunc order to keep D.E. 511 sealed.

I. DEFENDANT'S REQUEST TO HAVE D.E. 480, 507 AND 511 SEALED AFTER TWO YEARS SINCE THEIR FILING SHOULD BE DENIED.

Defendant's request to have D.E. 480, 507, and 511 sealed again after 2 years is based on a flawed premise that those matters were sealed pursuant to 09-SO-2 which allows for sealing of plea agreement and substantial assistance motions for a

period of two years. Defendant is incorrect, however. Those matters were not sealed pursuant to 09-SO-2 but instead pursuant to the inherent authority of the Court to seal matters. See Nixon v. Warner Communications, Inc., 435 U.S. 589, 598-99 (1978)(The trial court has supervisory power over its own records and files and may, in its sound discretion, seal documents if the public's right of access is outweighed by competing interests.); In re Knight Publishing Co., 743 F.2d 231, 235 (4th Cir.1984)(same). As there was no date set for expiration of the order to seal, and no one has sought to unseal those matters, they remain sealed and this request should be denied.

II. DEFENDANT'S REQUEST TO REPLACE HIS NAME WITH A PSEUDONYM SHOULD BE DENIED.

The Fourth Circuit has recognized that "in exceptional circumstances, compelling concerns relating to personal privacy or confidentiality may warrant some degree of anonymity in judicial proceedings, including use of a pseudonym." Doe v. Public Citizen, 749 F.3d 246, 273 (4th Cir. 2014). Because the use of pseudonyms in litigation undermines the public's right of access to judicial proceedings, however, allowing a litigant to proceed by pseudonym is a "rare dispensation." James v. Jacobson, 6 F.3d 233, 238 (4th Cir. 1993). Thus, "when a party seeks to litigate under a pseudonym, a district court has an independent obligation to ensure that extraordinary circumstances support such a request by balancing the party's stated interest in anonymity against the public's interest in openness and any prejudice that anonymity would pose to the opposing party." Public Citizen, 749 F.3d at 274.

Put simply, the prosecution, conviction, and judgment of Defendant are matters of public record. Defendant has failed to provide sufficient detail to assess the privacy interests at stake and, therefore, failed to meet his burden of showing that those privacy interests outweigh the public's presumptive and substantial interest in knowing the details of judicial litigation. Defendant has not stated any reason to proceed further in this case by use of a pseudonym. Accordingly, this motion should be denied.

III. DEFENDANT'S FACIAL CHALLENGE TO 09-SO-2 SHOULD BE DENIED.

In order to prevail on his facial challenge to 09-SO-2, Defendant must establish that there is no set of circumstances under which the standing order may be constitutionally applied. United States v. Salerno, 481 U.S. 739, 745 (1987). "In other words, a facial challenge to a [standing order] should fail if the [standing order] has a constitutional application." Women's Med. Prof'l Corp. v. Voinovich, 130 F.3d 187, 194 (6th Cir. 1997).

Defendant fails to carry his burden that there are not any set of circumstances under which 09-SO-2 may be constitutionally applied. The Standing Order, 09-SO-2, is directed at the sealing of plea agreements and substantial assistance motions. As reflected in that order, the Court balanced the safety of defendants who cooperate with the public's right to access to information about the case. Put simply, there is no basis on which to facially challenge 09-SO-2 as it is narrowly tailored to protect defendants, who choose to cooperate with the United States, from harm or retaliation and acknowledges the public's right to access information about such a case by

restricting the automatic sealing of plea agreements and substantial assistance motions to 2 years, with discretion reserved to the Court to extend that period. Based on the carefully balancing of interests reflected in 09-SO-2, and Defendant's general lack of any showing that it is facially unconstitutional, this motion should be denied.

IV. DEFENDANT'S REQUEST FOR THE COURT TO RECUSE ITSELF SHOULD BE DENIED.

Title 28 U.S.C. § 144 provides that "[w]henever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice ..., such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding." To be legally sufficient, Defendant's affidavit "must allege personal bias or prejudice caused by an extrajudicial source...." Sine v. Local No. 922 Int'l Bhd. of Teamsters, 882 F.2d 913, 914 (4th Cir.1989) (emphasis in original).

Defendant fails to present any evidence of bias from an extrajudicial source that would support his request for recusal. Defendant simply expresses displeasure with the timing and substance of the Court's prior rulings in this case. However, "[a] judge's action or experience in a case or related cases or attitude derived from his experience on the bench do not constitute a basis to allege personal bias." Id. at 915. Therefore, Defendant's request for recusal lacks merit and should be denied.

V. DEFENDANT'S REQUEST TO SEAL THE MOTION AT D.E. 592 SHOULD BE DENIED.

While difficult to discern, it appears that Defendant seeks to seal his filing at D.E. 592. See [D.E. 593]. The common law presumes a right of the public to inspect

and copy all "judicial records and documents." Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978). "This presumption of access, however, can be rebutted if countervailing interests heavily outweigh the public interests in access," and "[t]he party seeking to overcome the presumption bears the burden of showing some significant interest that outweighs the presumption." Rushford v. New Yorker Magazine, Inc., 846 F.2d 249, 253 (4th Cir. 1988). Some of the factors to be weighed in the common law balancing test "include whether the records are sought for improper purposes, such as promoting public scandals or unfairly gaining a business advantage; whether release would enhance the public's understanding of an important historical event; and whether the public has already had access to the information contained in the records." In re Knight Publ. Co., 743 F.2d 231, 235 (4th Cir.1984). Ultimately, under the common law the decision whether to grant or restrict access to judicial records or documents is a matter of a district court's "supervisory power," and it is one "best left to the sound discretion of the [district] court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case." Nixon, 435 U.S. at 598–99.

In contrast to the common law, "the First Amendment guarantee of access has been extended only to particular judicial records and documents." Stone v. University of Md. Med. Sys. Corp., 855 F.2d 178, 180 (4th Cir.1988). When the First Amendment provides a right of access, a district court may restrict access "only on the basis of a compelling governmental interest, and only if the denial is narrowly tailored to serve that interest." Id. The burden to overcome a First Amendment right of access rests

on the party seeking to restrict access, and that party must present specific reasons in support of its position. See Press–Enterprise Co. v. Superior Court, 478 U.S.1, 15 (1986) ("The First Amendment right of access cannot be overcome by [a] conclusory assertion").

In this case, Defendant alleges he could be harmed if D.E. 592 is not sealed but he does not allege any basis for that harm. Outside of arguing for sealing documents, requesting use of a pseudonym, seeking vacatur of 09-SO-2, and seeking recusal of the Court, Defendant's motion at D.E. 592 contains very little other information. As a result, Defendant has not shown some significant interest that outweighs the presumption of public access. Nor has Defendant shown that sealing D.E. 592 would be a compelling governmental interest or that it would be narrowly tailored to accomplish that interest. As a result, this motion should be denied.

VI. DEFENDANT'S REQUEST FOR NUNC PRO TUNC SEALING OF D.E. 511 SHOULD BE DENIED AS MOOT.

Defendant also seeks to seal the Court's order dated March 10, 2020 , see [D.E. 511], nunc pro tunc to March 1, 2022. See [D.E. 594]. However, D.E. 511 is already sealed and, despite Defendant's concerns, that sealing did not expire after two years under 09-SO-2. It appears that D.E. 511 remains sealed, there is no need for nunc pro tunc sealing to March 1, 2022, and this motion should be denied.[1]

[1] To the extent Defendant's motion can be liberally construed as seeking continued sealing of D.E. 184, the United States does not oppose that request.

Respectfully submitted this 19th day of May, 2022.

MICHAEL F. EASLEY, JR.
United States Attorney

BY: /s/ Rudy E. Renfer
RUDY E. RENFER
Attorney for the United States
United States Attorney's Office
Civil Division
150 Fayetteville Street, Suite 2100
Raleigh, NC 27601
Telephone: (919) 856-4530
Fax: (919) 856-4487
Email: rudy.e.renfer@usdoj.gov
N.C. Bar No. 23513

CERTIFICATE OF SERVICE

I do hereby certify that I have this 19th day of May, 2022, served a copy of the foregoing upon the below-listed party by filing the foregoing with the Court on this date using the CM/ECF system or placing a copy in the United States Mail to the following:

Anthony Andrews
#15965-056
FTC Oklahoma City
Federal Transfer Center
P.O. Box 898801
Oklahoma City, OK 73189

/s/ Rudy E. Renfer
RUDY E. RENFER
Attorney for the United States
United States Attorney's Office
Civil Division
150 Fayetteville Street, Suite 2100
Raleigh, NC 27601
Telephone: (919) 856-4530
Fax: (919) 856-4487
Email: rudy.e.renfer@usdoj.gov
N.C. Bar No. 23513

(Ex. 11)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:16-cr-00030-D-3

UNITED STATES OF AMERICA	)	
	)	OMNIBUS RESPONSE TO
v.	)	DEFENDANT'S MOTIONS AT
	)	D.E. 592, 593, 594, 600, 607
ANTHONY ANDREWS,	)	
	)	
Defendant.	)	

NOW COMES the United States of America, by and through the United States Attorney for the Eastern District of North Carolina, to hereby respond to Defendant's motions at Docket Entry ("D.E.") 592, 593, 594, 600 and 607. While difficult to discern, it appears that Defendant is requesting in D.E. 592 i) that Docket Entries 480, 507, and 511 be fully sealed and his name replaced with a pseudonym, ii) vacatur of Standing Order 09-SO-2 related to sealing plea agreements and substantial assistance motions, and iii) recusal of the Court. Also, while difficult to discern, he appears to request in D.E. 593 an order sealing the motion at D.E. 592 and in D.E. 594 that he request a nunc pro tunc order to keep D.E. 511 sealed. In D.E. 600 Defendant seeks an order sealing D.E. 598. Lastly, in D.E. 607, he seeks reconsideration of this Court's Order, [D.E. 605], requiring the United States to respond to his motions. Defendant's motions should all be denied.

PROCEDURAL HISTORY

On November 15, 2018, Defendant was sentenced to 312 months' imprisonment, 3 years' supervised release, and ordered to pay a special assessment of $100. [D.E. 465; 469].

On November 20, 2019, Defendant filed a sealed motion to seal D.E. 480, the sentencing transcript. [D.E. 497]. On February 27, 2020, the United States responded in opposition. [D.E. 507]. On March 5, 2020, Defendant filed a motion to seal the United States' response. [D.E. 510]. On March 10, 2020, the Court granted in part Defendant's motion to seal at D.E. 497 but denied as moot D.E. 510. [D.E. 511]. The Court ordered the United States to "prepare and file a redacted version of the sentencing transcript at docket entry 480 and the government's memorandum at docket entry 507." Id. The United States complied with the Court's order. See [D.E. 513; 514]. On June 22, 2020, the Fourth Circuit dismissed Defendant's appeal of the Court's order pursuant to a voluntary dismissal. [D.E. 531].

On March 21, 2022, Defendant filed a motion seeking to replace his name with a pseudonym, facially challenging Standing Order 09-SO-2, and seeking to seal previously sealed docket entries. [D.E. 592]. The same day, March 21, 2022, Defendant also filed a motion to seal. On March 25, 2022, Defendant filed a motion to seal nunc pro tunc. [D.E. 594]. On April 25, 2022, the Court ordered the United States to respond to those motions. [D.E. 597]. On May 19, 2022, the United States responded in opposition to the three motions [D.E. 598]. On June 14, 2022, Defendant filed a motion to seal D.E. 598. [D.E. 600]. On September 13, 2022, for purposes of

this response, the Court ordered the United States to respond to D.E. 592, 593, 594, and 600. [D.E. 605].[1] On September 26, 2022, Defendant filed a motion seeking reconsideration of this Court's prior order requiring the United States to responds to his motions. [D.E. 607].

ARGUMENT

I. DEFENDANT'S REQUEST TO HAVE D.E. 480, 507 AND 511 SEALED AFTER TWO YEARS SINCE THEIR FILING SHOULD BE DENIED AS MOOT.

Defendant's request to have D.E. 480, 507, and 511 sealed again after 2 years is based on a flawed premise that those matters were sealed pursuant to 09-SO-2, which allows for sealing of plea agreement and substantial assistance motions for a period of two years. Defendant is incorrect, however. Those matters were not sealed pursuant to 09-SO-2 but instead pursuant to the inherent authority of the Court to seal matters.

Standing Order 09-SO-2 applied to a very specific category of documents, that is plea agreements, motions under U.S.S.G. § 5K1.1, and motions under Fed. R. Crim. P. 35. As recognized by the Fourth Circuit, there are pleadings by defendants that may mention cooperation or assistance that do not squarely qualify as motions that fall under the umbrella of 09-SO-2. In such cases, the court's authority to seal does not fall derive from 09-SO-2 but rather from its inherent authority, see Nixon v. Warner Communications, Inc., 435 U.S. 589, 598-99 (1978)(The trial court has

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[1] The motions at D.E. 603 and D.E. 606 (motion for release under the First Step Act) were addressed via a separate response. See [D.E. 610].

supervisory power over its own records and files and may, in its sound discretion, seal documents if the public's right of access is outweighed by competing interests.); In re Knight Publishing Co., 743 F.2d 231, 235 (4th Cir.1984)(same), and the court should determine the merits of the motion to seal under the standard for the right of access under the First Amendment. See Doe v. United States, 962 F.3d 139, 152 (4th Cir. 2020)("Where automatic sealing does not apply to a specific category of filings, courts have no choice but to engage in the analysis discussed herein [i.e. right to access under the First Amendment] upon motion by the defendant or another interested party.").

The Court has already utilized that standard and denied Defendant's motion to seal Docket Entries 480, 507 in their entirety but did allow such relief by way of requiring the government to file redacted versions of Docket Entries 480 and 507. [D.E. 511]. As the Court's order in Docket Entry 511 derived from its inherent authority in applying the governing First Amendment standard and not under 09-SO-2, there was no date set for expiration of the order to seal. No one has sought to unseal those matters, they remain sealed and this request should be denied as moot.

II. DEFENDANT'S REQUEST TO REPLACE HIS NAME WITH A PSEUDONYM SHOULD BE DENIED.

The Fourth Circuit has recognized that "in exceptional circumstances, compelling concerns relating to personal privacy or confidentiality may warrant some degree of anonymity in judicial proceedings, including use of a pseudonym." Doe v. Public Citizen, 749 F.3d 246, 273 (4th Cir. 2014). Because the use of pseudonyms in litigation undermines the public's right of access to judicial proceedings, however,

allowing a litigant to proceed by pseudonym is a "rare dispensation." James v. Jacobson, 6 F.3d 233, 238 (4th Cir. 1993). Thus, "when a party seeks to litigate under a pseudonym, a district court has an independent obligation to ensure that extraordinary circumstances support such a request by balancing the party's stated interest in anonymity against the public's interest in openness and any prejudice that anonymity would pose to the opposing party." Public Citizen, 749 F.3d at 274.

Assuming, arguendo, that replacing Defendant's name with a pseudonym would serve a compelling interest of enhancing Defendant's safety, there is not a substantial probability that absent the requested sealing, that compelling interest would be harmed. Although Defendant wants to replace his name with a pseudonym, there are alternatives far less severe under the First Amendment that already protect Defendant's safety. Notably, the criminal docket comports with this Court's Standing Order 09-SO-02 (E.D.N.C. Feb. 12, 2010). Cf. Doe, 962 F.3d at 147. Additionally, Defendant has not plausibly identified specific documents on the public portion of the criminal docket that threaten his safety or specific threats arising from the criminal docket, and replacing his name with a pseudonym is overbroad. After all, the public and press have a qualified right of access to Defendant's name and the public portion of the criminal docket, and the public portion of the docket has been available (without incident) since 2016. See Doe, 962 F.3d at 143-53; Pub. Citizen, 749 F.3d at 265-75 (holding that the public and press have a presumptive right to inspect civil docket); In re State-Record Co., 917 F.2d at 127-29 (holding that the district court erred in sealing entire criminal docket). Finally, an alternative to Defendant's

requested pseudonym adequately protects the compelling interest. Specifically, the court-ordered redactions in its prior order protect against Defendant's concerns and appropriately safeguards the public's right to access information from the criminal docket. See generally [D.E. 511]. Defendant has not stated any other valid reason to proceed further in this case by use of a pseudonym that outweighs the public's right to information. Accordingly, this motion should be denied.

III. DEFENDANT'S FACIAL CHALLENGE TO 09-SO-2 SHOULD BE DENIED.

Defendant presents two identical arguments that 09-SO-2 is unconstitutional. [D.E. 592, pp. 2-4; D.E. 600, p. 1]. In order to prevail on his facial challenge to 09-SO-2, Defendant must establish that there is no set of circumstances under which the standing order may be constitutionally applied. United States v. Salerno, 481 U.S. 739, 745 (1987). "In other words, a facial challenge to a [standing order] should fail if the [standing order] has a constitutional application." Women's Med. Prof'l Corp. v. Voinovich; 130 F.3d 187, 194 (6th Cir.1997).

Defendant fails to carry his burden that there are not any set of circumstances under which 09-SO-2 may be constitutionally applied. The Standing Order, 09-SO-2, is directed at the sealing of plea agreements and substantial assistance motions. As reflected in that order, the Court balanced the safety of defendants who cooperate with the public's right to access to information about the case. Put simply, there is no basis on which to facially challenge 09-SO-2 as it is narrowly tailored to protect defendants, who choose to cooperate with the United States, from harm or retaliation and acknowledges the public's right to access information about such a case by

restricting the automatic sealing of plea agreements and substantial assistance motions to 2 years, with discretion reserved to the Court to extend that period. Based on the carefully balancing of interests reflected in 09-SO-2, and Defendant's general lack of any showing that it is facially unconstitutional, this claim in D.E. 592 and D.E. 600 should be denied.

IV. DEFENDANT'S REQUEST FOR THE COURT TO RECUSE ITSELF SHOULD BE DENIED.

Title 28 U.S.C. § 144 provides that "[w]henever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice ..., such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding." To be legally sufficient, Defendant's affidavit "must allege personal bias or prejudice caused by an extrajudicial source...." Sine v. Local No. 922 Int'l Bhd. of Teamsters, 882 F.2d 913, 914 (4th Cir.1989) (emphasis in original).

Defendant fails to present any evidence of bias from an extrajudicial source that would support his request for recusal. Defendant simply expresses displeasure with the timing and substance of the Court's prior rulings in this case. However, "[a] judge's action or experience in a case or related cases or attitude derived from his experience on the bench do not constitute a basis to allege personal bias." Id. at 915. Therefore, Defendant's request for recusal lacks merit and should be denied.

V. DEFENDANT'S REQUEST TO SEAL THE MOTION AT D.E. 592 SHOULD BE DENIED.

While difficult to discern, it appears that Defendant seeks to seal his filing at D.E. 592. See [D.E. 593]. The court should determine the merits of the motion to seal under the standard for the right of access under the First Amendment. See Doe, 962 F.3d at 152. "[T]he First Amendment guarantee of access has been extended only to particular judicial records and documents." Stone v. University of Md. Med. Sys. Corp., 855 F.2d 178, 180 (4th Cir.1988). When the First Amendment provides a right of access, a district court may restrict access "only on the basis of a compelling governmental interest, and only if the denial is narrowly tailored to serve that interest." Id. The court may seal D.E. 592 only if (1) sealing serves a compelling interest; (2) there is a substantial probability that in the absence of sealing, that compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect that compelling interest. Doe, 962 F .3d at 146; Pub. Citizen, 749 F.3d at 272-73; In re Washington Post Co., 807 F.2d 383, 392 (4th Cir. 1986). The burden to overcome a First Amendment right of access rests on the party seeking to restrict access, and that party must present specific reasons in support of its position. See Press–Enterprise Co. v. Superior Court, 478 U.S.1, 15 (1986) ("The First Amendment right of access cannot be overcome by [a] conclusory assertion").

In this case, Defendant alleges he could be harmed if D.E. 592 is not sealed but he does not allege any basis for that harm. Outside of arguing for sealing documents, requesting use of a pseudonym, seeking vacatur of 09-SO-2, and seeking recusal of the Court, Defendant's motion at D.E. 592 contains very little other information.

Defendant provides no "specific reasons" that justify sealing D.E. 592. Defendant's request for relief concerning 09-SO-2, a publicly available document, by itself, should not be sufficient under the First Amendment standard. In toto, Defendant has not shown that sealing D.E. 592 would be a compelling governmental interest, that the interest would be harmed without sealing, or that sealing would be narrowly tailored to accomplish that interest. As a result, this motion should be denied.

VI. DEFENDANT'S REQUEST FOR NUNC PRO TUNC SEALING OF D.E. 511 SHOULD BE DENIED AS MOOT.

Defendant also seeks to seal the Court's order dated March 10, 2020 , see [D.E. 511], nunc pro tunc to March 1, 2022. See [D.E. 594]. However, D.E. 511 is already sealed and, despite Defendant's concerns, that sealing did not expire after two years under 09-SO-2. See Section I, supra. It appears that D.E. 511 remains sealed, there is no need for nunc pro tunc sealing to March 1, 2022, and this motion should be denied.[2]

VII. DEFENDANT'S MOTION TO SEAL D.E. 598 SHOULD BE DENIED.

Defendant also seeks to seal D.E. 598, the United States response to his motion. Under the First Amendment standard applicable to his motion to seal a court document, Defendant fails to establish he may be entitled to relief.

When the First Amendment provides a right of access, a district court may restrict access "only on the basis of a compelling governmental interest, and only if the denial is narrowly tailored to serve that interest." Stone v. University of Md.

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[2] To the extent Defendant's motion can be liberally construed as seeking continued sealing of D.E. 184, the United States does not oppose that request.

Med. Sys. Corp., 855 F.2d 178, 180 (4th Cir.1988). The burden to overcome a First Amendment right of access rests on the party seeking to restrict access, and that party must present specific reasons in support of its position. See Press–Enterprise Co. v. Superior Court, 478 U.S.1, 15 (1986) ("The First Amendment right of access cannot be overcome by [a] conclusory assertion").

Here, the United States response at D.E. 598 does not discuss or mention any activity that would subject Defendant to increased risk of harm. General arguments regarding the sufficiency of his challenge to Standing Order 09-SO-2, a document which is and has been publicly available for years, do not rise to a level of establishing that Defendant would be harmed if D.E. 598 were not sealed. In toto, Defendant has not shown that sealing D.E. 598 would be a compelling governmental interest, that the interest would be harmed without sealing, or that sealing would be narrowly tailored to accomplish that interest. As a result, this motion should be denied.

VIII. DEFENDANT'S MOTION FOR RECONSIDERATION SHOULD BE DENIED.

"[T]he Federal Rules of Criminal Procedure do not specifically provide for motions for reconsideration and prescribe the time in which they must be filed." Nilson Van & Storage Co. v. Marsh, 755 F.2d 362, 364 (4th Cir. 1985). However, to the extent the Court construes Defendant's motion liberally, under Fed. R. Civ. P., Rule 59(e), an aggrieved party may move to alter or amend a judgment. Fed. R. Civ. P. 59(e); Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). The Fourth Circuit holds that such relief is appropriate only to "(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." Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007) (quoting Ingle v. Yelton, 439 F.3d 191, 197 (4th Cir. 2006)).

Where a motion does not raise new arguments, but merely urges the court to "change its mind," relief is not authorized. United States v. Williams, 674 F.2d 310, 312 (4th Cir.1982). Rule 59(e) is not a vehicle for a petitioner to merely relitigate the previously decided issues. Delong v. Taylor, 790 F. Supp. 594, 618 (E.D. Va. 1991) (quoting Durkin v. Taylor, 444 F. Supp. 879, 888 (E.D. Va. 1977)).

Here, Defendant offers no reason for the Court to rescind its order for the United States to respond to his motions. There has been no change in law, no evidence not previously available, there has been no clear error of law, and there is no manifest injustice in the Court's order. Accordingly, Defendant's request for the Court to rescind it prior order for a response to Defendant's motions should be denied. See, e.g., Mascone v. Am. Physical Soc'y, Inc., 2009 WL 3156538, at *3 (D. Md. Sept. 25, 2009) ("[A] motion for reconsideration is not a proper vehicle for an entreaty for the Court to change its mind ... by rehashing the arguments made in the motions, supporting memoranda, and oral arguments before the Court at the summary judgment hearing."); Consulting Eng'rs, Inc. v. Geometric Software Works LLC, 2007 WL 2021901, at *2 (E.D. Va. July 6, 2007) ("A party's mere disagreement with the court's ruling does not warrant a Rule 59(e) motion, and such motion should not be used to 'rehash' arguments previously presented or to submit evidence which should have been previously submitted.")

Respectfully submitted this 14th day of October 2022.

MICHAEL F. EASLEY, JR.
United States Attorney

BY: /s/ Rudy E. Renfer
RUDY E. RENFER
Attorney for the United States
United States Attorney's Office
Civil Division
150 Fayetteville Street, Suite 2100
Raleigh, NC 27601
Telephone: (919) 856-4530
Fax: (919) 856-4487
Email: rudy.e.renfer@usdoj.gov
N.C. Bar No. 23513