

United States Court of Appeals
for the Fifth Circuit

No. 24-30140

United States Court of Appeals
Fifth Circuit

FILED

June 3, 2024

Lyle W. Cayce
Clerk

PETER MULE,

Petitioner—Appellant,

versus

TIM HOOPER, *Warden, Louisiana State Penitentiary,*

Respondent—Appellee.

Application for Certificate of Appealability
the United States District Court
for the Western District of Louisiana
USDC No. 6:98-CV-1924

ORDER:

Peter Mule, Louisiana prisoner # 73082, seeks a certificate of appealability (COA) to appeal the district court's denial of his postjudgment motion under Federal Rule of Civil Procedure 60(b)(4), which he filed after the district court's 2001 dismissal of his 28 U.S.C. § 2254 application on the merits. In his COA motion, Mule contends that the district court's 2001 judgment was void because the court lacked jurisdiction or acted in a manner inconsistent with due process.

In order to obtain a COA, Mule must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Slack v.*

McDaniel, 529 U.S. 473, 484 (2000). As to any challenge to the district court's denial of his Rule 60(b) motion, Mule must show that reasonable jurists could debate whether the district court's ruling was an abuse of discretion. *See Hernandez v. Thaler*, 630 F.3d 420, 428 (5th Cir. 2011).

To the extent that Mule sought in his Rule 60(b) motion to raise a new challenge to his conviction based on the Louisiana Supreme Court's decision in *State v. Dilosa*, 848 So. 2d 546, 548 (La. 2003), that claim was an unauthorized successive § 2254 claim, over which the district court lacked jurisdiction. *See Gonzalez v. Crosby*, 545 U.S. 524, 530-32 (2005). In that regard, the issues presented do not deserve encouragement to proceed further. *See Slack*, 529 U.S. at 484.

To the extent that Mule sought in his Rule 60(b) motion to attack the integrity of his federal habeas proceedings, because he makes only conclusory assertions in his COA motion that the district court lacked jurisdiction and acted in a manner inconsistent with due process and fails to meaningfully brief any intelligible arguments in support of such assertions, they are waived. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993). Accordingly, Mule has failed to show that reasonable jurists could debate the district court's denial of his postjudgment motion. *See Slack*, 529 U.S. at 484; *Hernandez*, 630 F.3d at 428.

The motion for a COA is therefore DENIED. Mule's motion for leave to proceed in forma pauperis on appeal is likewise DENIED.



IRMA CARRILLO RAMIREZ
United States Circuit Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

PETER MULE #73082

CASE NO. 6:98-CV-01924 SEC P

VERSUS

JUDGE TERRY A. DOUGHTY

LA STATE PEN

MAGISTRATE JUDGE DAVID J. AYO

ORDER

Pending before the Court is a Motion for Reconsideration [Doc. No. 35] filed by Plaintiff, Peter Frank Mule. Movant asks the Court to reconsider its 2001 Judgment [Doc. No. 28] dismissing the petition for Habeas Corpus.

While there is no motion for reconsideration *per se*, there is a motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e). The Fifth Circuit has explained that a Rule 59(e) motion “calls into question the correctness of a judgment,” but “is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered,” or were offered, “before the entry of judgment.” *Templet v. HydroChem, Inc.*, 367 F.3d 473, 478-79 (5th Cir. 2004) (citations and internal quotation marks omitted). The Court has considered the motion, and it sees no reason to alter or amend its judgment. Accordingly,

IT IS ORDERED that the Motion is **DENIED**.

Monroe, Louisiana, this 28th day of February 2024.

Terry A. Doughty
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

PETER MULE #73082

CASE NO. 6:98-CV-01924 SEC P

VERSUS

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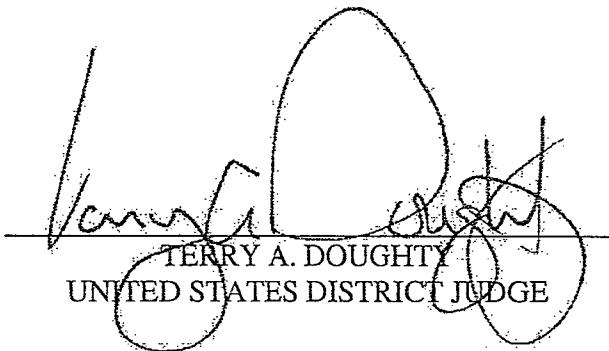
ORDER

Pending before the Court is a Motion entitled “FRCVP 60(b)(1)” [Doc. No. 38] filed by *pro se* Plaintiff, Peter Mule (“Plaintiff” or “Mule”). Plaintiff moves the Court for relief from its earlier order [Doc. No. 37] denying his Motion for Relief under Rule 60(b)(4) [Doc. No. 35] (“original Motion”).

IT IS ORDERED that Plaintiff’s Motion is **DENIED** as frivolous and without merit. Even though the Court based its earlier order on Federal Rule of Civil Procedure 59(e), Plaintiff’s original Motion likewise lacked merit under Federal Rule of Civil Procedure 60(b)(4). Plaintiff claims the judgment [Doc. No. 28] is void for lack of subject-matter jurisdiction and personal jurisdiction. Plaintiff further asserts the judgment is void because the Court acted inconsistently with due process of law. However, when this Court issued its Judgment denying the Plaintiff’s petition for writ of habeas corpus, it had both subject-matter and personal jurisdiction. Further, this Court has not deprived Plaintiff of due process of law.

There is no basis under which the Court shall grant relief from either the previous Judgment dismissing Plaintiff’s petition for writ of habeas corpus or the Order denying Plaintiff’s original Motion. Accordingly, Plaintiff’s Motion [Doc. No. 38] is **DENIED** as frivolous and without merit.

MONROE, LOUISIANA, this 11th day of March 2024.



TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE