No. 23-6024

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REGINOLD CAVOY STEED,

Petitioner-Appellant,

v.

JOHNNY FITZ, Warden,

Respondent-Appellee.

ORDER

Before: GRIFFIN, KETHLEDGE, and NALBANDIAN, Circuit Judges.

Reginold Cavoy Steed, a Tennessee prisoner proceeding pro se, appeals the district court's order denying his motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b). Steed sought relief from the district court's judgment denying his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. Steed moves this court for a certificate of appealability, *see* 28 U.S.C. § 2253(c), and to proceed in forma pauperis.

In 2016, a jury convicted Steed of attempted voluntary manslaughter, especially aggravated robbery, and aggravated assault, and the trial court sentenced him to 27 years' imprisonment. The Tennessee Court of Criminal Appeals affirmed the trial court's judgment. *State v. Steed*, No. M2016-01405-CCA-R3-CD, 2017 WL 1830105, at *1 (Tenn. Crim. App. May 5, 2017). Steed unsuccessfully sought post-conviction relief in the state courts. *See Steed v. State*, No. M2018 00492-CCA-R3-PC, 2019 WL 169265, at *10 (Tenn. Crim. App. Jan. 11, 2019). Relevant here, Steed asserted in his post-conviction appeal that post-trial counsel was ineffective for failing to present evidence that the victim allegedly recanted his trial testimony identifying Steed as the perpetrator in a victim impact statement submitted with the presentence report. *Id.* at *3-4, 6. The state appellate court rejected this claim, finding that there was no clear and convincing evidence

that a recantation from the victim existed. *Id.* at *7. The court reviewed the victim impact statement and found that it clearly identified Steed as the perpetrator. *Id.*

Steed then filed a § 2254 petition in the district court, asserting that his attorney was ineffective at sentencing for failing to address the victim's alleged post-trial recantation and that post-conviction appellate counsel was ineffective. The district court denied Steed's petition, concluding that the state appellate court reasonably rejected his first claim and that his claims regarding post-conviction counsel were not cognizable on habeas review. Steed did not appeal.

In May 2023, Steed moved for an order authorizing the district court to consider a second or successive § 2254 petition. He proposed to again raise a claim concerning the victim's alleged recantation, arguing that the presentence report was never filed with the trial court because it included this exculpatory statement and that the State had presented fabricated evidence in his state post-conviction proceeding. Steed acknowledged that he had raised this claim in his initial § 2254 petition but argued that new evidence—the state court's electronic docket report—supported his filing a second petition because it showed that the presentence report was never docketed. We denied the motion, concluding that his claim did not rest on "new facts" within the meaning of 28 U.S.C. § 2244(b) because Steed (1) did not explain why he could not access the docket report before he filed his initial § 2254 petition and (2) failed to show that, had the presentence report been docketed, no reasonable factfinder would have found him guilty. *In re Steed*, No. 23-5408, slip op. at 2-3 (6th Cir. Oct. 6, 2023).

Steed then returned to the district court, at that time, three years since that court's denial of his petition, and moved for relief from under Rule 60(b)(3) and (d)(3). He argued that his habeas case had been "adjudicated on fraudulent material facts regarding the content and filing date of the presentence report with the trial court." As he had in his earlier motion for authorization to file a second or successive habeas petition, Steed referred to the state trial court's electronic docket report showing that "there was no presentence report filed with the trial court in January of 2016" and argued that this omission violated his due process rights. He contended, "If the presentence investigation revealed the victim perjured himself then the conviction is thus void." Steed

contended that the absence of an entry for the presentence report on the state court's docket "proves that a fraud has been committed upon the court" and asked the district court to set aside his conviction and remand the matter to the state court for a new trial.

The district court denied the motion as untimely to the extent it sought relief under Rule 60(b)(3) and concluded that his request for relief under Rule 60(d)(3) lacked merit. The court also denied a certificate of appealability. Steed timely appealed the district court's order. He now moves this court for a certificate of appealability.

A prisoner may file a Rule 60 motion to attack "some defect in the integrity of the federal habeas proceedings," including a fraud on the federal habeas court. *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005) (considering a Rule 60(b) motion); *see also United States v. Baker*, 718 F.3d 1204, 1207-08 (10th Cir. 2013) (applying *Gonzalez* to a Rule 60(d)(3) motion). However, a prisoner may not file a Rule 60 motion "that 'in effect, ask[s] for a second chance to have the merits determined favorably.'" *Thompkins v. Berghuis*, 509 F. App'x 517, 519 (6th Cir. 2013) (quoting *Gonzalez*, 545 U.S. at 532 n.5). Such a motion would not go to the integrity of the federal habeas "proceeding and should instead be characterized as a second or successive habeas petition." *Id.* at 519.

Here, Steed contends that the State fraudulently failed to docket the presentence report in the state court, which in turn amounted to a fraud upon the district court in his habeas proceedings. Despite Steed's attempt to couch his arguments as allegations of fraud occurring during his habeas proceedings, he in essence challenges the State's alleged misrepresentation of the filing of the presentence report in state court and contends that a fraud was committed there, rather than in the habeas court. Instead of attacking "some defect in the integrity of the federal habeas proceedings," Steed merely attempts to pursue the same ground for relief that he proposed in his earlier motion for authorization to file a second or successive § 2254 petition. *Gonzalez*, 545 U.S. at 532. Accordingly, the district court should have construed Steed's Rule 60(b) motion as a second or successive habeas petition and transferred the case to this court to determine whether he should be

granted authorization to file another habeas petition. *See In re Bowling*, 422 F.3d 434, 440 (6th Cir. 2005).

Construed as a request for authorization to file a second or successive habeas petition, Steed's Rule 60(b) motion does not satisfy the gatekeeping requirements under § 2244(b). We may authorize the filing of a second or successive habeas petition only if the applicant makes a prima facie showing that the petition contains a new claim that relies on (1) "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable" or (2) new facts that could not have been discovered earlier through the exercise of reasonable diligence and that, "if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." 28 U.S.C. § 2244(b)(2), (b)(3)(C). Steed's motion fails to meet these requirements for the same reasons stated in our order denying his previous motion for authorization.

For these reasons, Steed's motion for a certificate of appealability is **DENIED**, his construed request for authorization to file a second or successive habeas petition is also **DENIED**, and his motion to proceed in forma pauperis is **DENIED** as moot.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
May 21, 2024
KELLY L. STEPHENS, Clerk

No. 23-6024

Appendix A-2

REGINOLD CAVOY STEED,

Petitioner-Appellant,

v.

JOHNNY FITZ, Warden,

Respondent-Appellee.

Before: GRIFFIN, KETHLEDGE, and NALBANDIAN, Circuit Judges.

JUDGMENT

THIS MATTER came before the court upon the application by Reginold Cavoy Steed for a certificate of appealability.

UPON FULL REVIEW of the record and any submissions by the parties,

IT IS ORDERED that the motion for a certificate of appealability is DENIED, and the construed request for authorization to file a second or successive habeas petition is also DENIED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

REGINOLD CAVOY STEED, #472318,	)	
	)	
Petitioner,	)	
	)	
v.	)	**NO. 3:19-cv-00568**
	)	
TONY MAYES, Warden,	)	
	)	
Respondent.	)	

MEMORANDUM OPINION AND ORDER

This pro se habeas corpus case has been closed for more than three years. On November 3, 2023, Petitioner Reginold Steed filed a "Motion for Relief from Judgment Pursuant to F.R.C.P. Rule 60(b)(3) (d)(3)" (Doc. No. 23) and an application for leave to proceed in forma pauperis (IFP). (Doc. No. 24). As explained below, the Motion and IFP application will be denied.

I. Procedural History

On July 5, 2020, the Court denied Petitioner's pro se Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 and dismissed this case. (Doc. Nos. 13–15). Petitioner did not appeal.

On May 4, 2023, Petitioner sought permission from the U.S. Court of Appeals for the Sixth Circuit to file a second or successive habeas petition in this Court.[1] On October 6, 2023, the Sixth Circuit denied Petitioner's motion and entered judgment against him. (Doc. Nos. 18–19). In so ruling, the Sixth Circuit: (1) noted that this Court, in dismissing the case in 2020, had denied Petitioner's claim that "his attorney was ineffective at sentencing for failing to address the victim's post-trial recantation of his identification of Steed in a victim impact statement included in the

[1] See In re Steed, No. 23-5408, Doc. No. 1 (6th Cir. May 4, 2023).

presentence report"; (2) found that Petitioner now proposed to raise a new "claim concerning the victim's alleged recantation in the presentence report," this time asserting a due process violation based on the fact that the trial court's electronic docket report does not reflect the filing of the presentence report "because it included this exculpatory statement"; and (3) found that the proposed due process claim did not rely on a new rule of constitutional law or any new facts, but on (a) an electronic docket report that could have been discovered before Petitioner filed his § 2254 petition, and (b) speculative allegations of a recantation without proof that the recanting statement actually existed. (Doc. No. 18 at 1–3). The Sixth Circuit found that, not only was the electronic docket report offered by Petitioner not "new," it did not, by its failure to refer to the presentence report's filing, establish that the presentence report must have contained a recanting statement. (Id. at 3).

After receiving the Sixth Circuit's order and judgment, Petitioner filed a notice of appeal from this Court's July 2020 dismissal order on October 23, 2023. (Doc. No. 20). Ten days later, on November 3, he filed the instant Motion and IFP application in this Court as well as a motion for voluntary dismissal of his appeal in the Sixth Circuit; he asked the Sixth Circuit to "please terminate that appeal so the Rule 60(b) proceeding can commence in the U.S. District Court." Steed v. Fitz, No. 23-5941, Doc. No. 3 (6th Cir. Nov. 3, 2023). The Sixth Circuit dismissed the appeal on November 8, 2023. Id., Doc. No. 5.

II. Analysis

Although the Motion before the Court is styled a motion under "Rule 60(b)(3) (d)(3)" (Doc. No. 23 at 1), Petitioner primarily argues for relief under Rule 60(b)(3). He asserts fraud by the State, contending that the trial court's electronic docket report showing "there was no presentence report filed with the trial court in January 2016" amounts to evidence that "the State

elected to tender forged documents" when it produced records showing that the presentence report had been filed on January 4 and supplemented on January 14, 2016. (Doc. No. 23 at 1–2, 7; see Doc. No. 8-12, Exhibits from Sentencing Hearing, at 5, 18).

Rule 60(b)(3) allows for relief from judgment based on "fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party." Fed. R. Civ. P. 60(b)(3). But a Rule 60(b)(3) motion "must be made . . . no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1); see Blunt v. Campbell, No. 19-1470, 2019 WL 11753818, at *2 (6th Cir. Aug. 8, 2019). Because judgment entered against Petitioner more than three years ago, his Motion under Rule 60(b)(3) is clearly untimely and subject to denial on that basis.

Petitioner also briefly argues for relief under Rule 60(d)(3), which allows an independent action in equity for fraud on the court "to prevent a grave miscarriage of justice, which in the habeas context requires a strong showing of actual innocence." Blunt, 2019 WL 11753818, at *2–3 (quoting Mitchell v. Rees, 651 F.3d 593, 596, 596 (6th Cir. 2011)) (internal quotation marks omitted). Assuming that the Motion could be construed as an effective vehicle for instituting such an independent action, it would not be untimely, as such actions "are not time-limited." Mitchell, 651 F.3d at 597 (quoting Buell v. Anderson, 48 F. App'x 491, 498 (6th Cir. 2002)). However, the Sixth Circuit has already rejected Petitioner's assertion of a claim arising from what the record in this case says about the presentence report's filing in state court, versus what the electronic docket report fails to say, and found that such discrepancy did not suffice to show "that no reasonable factfinder would have found him guilty of the underlying offense." (Doc. No. 18 at 2–3); cf. Blunt, 2019 WL 11753818, at *2–3 (approving district court's decision denying Rule 60 motion in habeas case on ground that Sixth Circuit "had decisively rejected this exact claim" earlier in the litigation).

Petitioner offers no new grounds to show that a different outcome is warranted as a matter of equity under Rule 60(d)(3). Accordingly, his Motion for such relief is without merit.

III. Conclusion

For the above reasons, Petitioner's Motion and IFP application (Doc. Nos. 23 and 24) are **DENIED**.

Because this constitutes a "final order adverse to" Petitioner, the Court must "issue or deny a certificate of appealability." Habeas Rule 11(a). A certificate of appealability may issue only if Petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Furthermore, where a habeas petition is dismissed on procedural grounds, a certificate of appealability will not issue unless "jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Dufresne v. Palmer, 876 F.3d 248, 253 (6th Cir. 2017) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)).

As reasonable jurists would not debate the Court's ruling on Petitioner's Rule 60 Motion, the Court **DENIES** a certificate of appealability. Petitioner may, however, seek a certificate of appealability directly from the Sixth Circuit Court of Appeals. Fed. R. App. P. 22(b)(1).

The Court **CERTIFIES** that any appeal from this dismissal would not be taken in good faith. 28 U.S.C. § 1915(a)(3).

IT IS SO ORDERED.

Waverly D. Crenshaw, Jr.

WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE

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