

APPENDIX A

TERRANCE GERARD STANTON, Movant, v. UNITED STATES OF AMERICA, Respondent.
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA,
STATESBORO DIVISION
2017 U.S. Dist. LEXIS 35308
CV615-064,CR612-018
March 13, 2017, Decided
March 13, 2017, Filed

Editorial Information: Subsequent History

Vacated by Stanton v. United States, 2017 U.S. Dist. LEXIS 38862 (S.D. Ga., Mar. 17, 2017)

Editorial Information: Prior History

Stanton v. United States, 2017 U.S. Dist. LEXIS 35656 (S.D. Ga., Jan. 9, 2017)

Counsel

For USA, Plaintiff (6:12-cr-00018-DHB-GRS): Brian T. Rafferty, Edward J. Tarver, James D. Durham, Jeffrey J. Buerstatte, R. Brian Tanner, James Christian Stuchell, U.S. Attorney's Office - Savannah, Savannah, GA; T. Shane Mayes, Moore, Ingram, Johnson & Steele, LLP, Marietta, GA.

Terrance Gerard Stanton, Petitioner
(6:15-cv-00064-LGW-GRS), Pro se, Estill, GA.
United States Of America, Respondent
(6:15-cv-00064-LGW-GRS): R. Brian Tanner, LEAD ATTORNEY, U.S. Attorney's Office - Savannah, Savannah, GA.

Judges: J. RANDAL HALL, UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: J. RANDAL HALL

Opinion

ORDER

After a careful de novo review of the record in this case, the Court concurs with the Magistrate Judge's Report and Recommendation (R&R), to which no objections have been filed. Accordingly, the R&R is **ADOPTED**, and this case is **DISMISSED** with prejudice.

ORDER ENTERED at Augusta, Georgia, this 13th day of March, 2017.

/s/ J. Randal Hall

J. RANDAL HALL

UNITED STATES DISTRICT JUDGE

SOUTHERN DISTRICT OF GEORGIA

/s/ J. Randal Hall
J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA

Footnotes

1

"If the court denies a certificate, [a party] may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22." Rule 11(a) to the Rules Governing Section 2255 Proceedings.

APPENDIX B

TERRANCE GERARD STANTON, Movant, v. UNITED STATES OF AMERICA, Respondent.
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA,
STATESBORO DIVISION
2017 U.S. Dist. LEXIS 55160
CV615-064,CR612-018
April 11, 2017, Decided
April 11, 2017, Filed

Editorial Information: Subsequent History

Reconsideration denied by, Motion denied by, As moot Stanton v. United States, 2017 U.S. Dist. LEXIS 80763 (S.D. Ga., May 25, 2017)

Editorial Information: Prior History

Stanton v. United States, 2017 U.S. Dist. LEXIS 35656 (S.D. Ga., Jan. 9, 2017)

Counsel Brian T. Rafferty, Edward J. Tarver, James D. Durham, Jeffrey J. Buerstatte, Joseph D. Newman, R. Brian Tanner, James Christian Stuchell, Theodore S. Hertzberg, U.S. Attorney's Office - Savannah, Savannah, GA.

T. Shane Mayes, Moore, Ingram, Johnson & Steele, LLP
Emerson Overlook, Marietta, GA.

Judges: J. RANDAL HALL, UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: J. RANDAL HALL

Opinion

ORDER

After a careful *de novo* review of the record in this case, the Court concurs with the Magistrate Judge's Report and Recommendation (R&R), to which objections have been filed. Accordingly, the R&R is **ADOPTED**, and this case is **DISMISSED** with prejudice.

Further, a prisoner seeking relief under 28 U.S.C. § 2255 must obtain a certificate of appealability ("COA") before appealing the denial of his application for writ of habeas corpus. 28 U.S.C. § 2253(c)(1)(B). This Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rule 11(a) to the Rules Governing Section 2255 Proceedings. This Court should grant a COA only if the prisoner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). For the reasons set forth in the Report and Recommendation, and in consideration of the standards enunciated in *Slack v. McDaniel*, 529 U.S. 473, 482-84, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000), movant has failed to make the requisite showing. Accordingly, a COA is **DENIED** in this case.¹ Moreover, because there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. Accordingly, petitioner is not entitled to appeal *in forma pauperis*. See 28 U.S.C. § 1915(a)(3).

ORDER ENTERED at Augusta, Georgia, this 11th day of April, 2017.

APPENDIX C

TERRANCE GERARD STANTON, Petitioner, v. UNITED STATES OF AMERICA, Respondent.
UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA,
STATESBORO DIVISION
2017 U.S. Dist. LEXIS 80763
CV 615-064,(Formerly CR 612-018)
May 25, 2017, Decided
May 25, 2017, Filed

Editorial Information: Prior History

Stanton v. United States, 2017 U.S. Dist. LEXIS 55160 (S.D. Ga., Apr. 11, 2017)

Counsel For USA, Plaintiff (6:12-cr-00018-JRH-GRS-17): Brian T. Rafferty, James D. Durham, Jeffrey J. Buerstatte, Joseph D. Newman, R. Brian Tanner, James Christian Stuchell, Theodore S. Hertzberg, U.S. Attorney's Office - Savannah, Savannah, GA; Edward J. Tarver, Enoch Tarver, P.C., Augusta, GA; T. Shane Mayes, Moore, Ingram, Johnson & Steele, LLP, Marietta, GA.

Judges: J. RANDAL HALL, CHIEF UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: J. RANDAL HALL

Opinion

ORDER

On April 11, 2017, this Court dismissed Petitioner's motion brought pursuant to 28 U.S.C. § 2255. On April 24, 2017, Petitioner filed a motion to extend the time to file a Rule 59 (e) motion, Federal Rules of Civil Procedure, or in the alternative, a notice of appeal. Because a district court cannot extend the time to file Rule 59 (e) motions, the Court denied the motion to extend time and directed the Clerk of Court to docket the motion as a Notice of Appeal *nunc pro tunc* to April 24, 2017. (See Order of May 4, 2017, Doc. 32.)

Not satisfied with this result, Petitioner filed his Rule 59 (e) motion on May 10, 2017, along with a motion asking the Court to take notice that the Rule 59 (e) motion was timely filed post-judgment and a motion to proceed in forma pauperis.

Rule 59 (e) motions must be filed within 28 days of the entry of judgment. Judgment in this case was entered on April 11, 2017. Thus, Petitioner had until May 9, 2017, to file his motion. Although the Clerk docketed his Rule 59 (e) motion on May 10th, it appears that Petitioner deposited it in the mail on May 3, 2017. Accordingly/ Petitioner's motion to take notice that his Rule 59 (e) motion was timely filed (doc. 38) is hereby **GRANTED**, and the Court will address the merits of the same.

Although Rule 59 (e) does not set forth the grounds for relief, district courts in this Circuit have identified three that merit reconsideration of an order: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice. See, e.g., Ctr. for Biological Diversity v. Hamilton, 385 F. Supp. 2d 1330, 1337 (N.D. Ga. 2005); Sussman v. Salem, Saxon & Nielsen, P.A., 153 F.R.D. 689, 694 (M.D. Ga. 1994) . Here,

Petitioner is relying upon new evidence - a letter dated April 21, 2017 from his court-appointed counsel to the effect that during the plea negotiations with Petitioner, the Government insisted that Petitioner was a career offender when in fact, he was not. Petitioner therefore argues that he was offered ineffective assistance of counsel because his counsel erroneously believed and therefore advised him as if he would be sentenced as a career offender; thus, Petitioner took his chances at a jury trial rather than plead guilty.

The new evidence, counsel's letter, adds nothing to the Report and Recommendation's analysis of this issue. Petitioner raised this ineffectiveness claim in his § 2255 petition, but as pointed out by the United States Magistrate Judge, even assuming Petitioner's counsel (as well as the Government) were wrong about his status as a career offender, Petitioner was not prejudiced thereby. (See Report & Recommendation, Doc. 16, at 8-10.) Petitioner was offered a guideline range of 168 to 210 months' imprisonment during plea negotiations. Had counsel offered correct advice, Petitioner was subject to a 240 month-sentence. (Id. at 8-9.) Since Petitioner had already turned down the 168 to 210 months plea deal, there is no "reasonable probability" that he would have accepted the deal if he knew he was actually subject to 240 months. (Id. at 9-10.) Accordingly, evidence that defense counsel or the Government misrepresented his career offender status is irrelevant.

Upon the foregoing, Petitioner's Rule 59(e) motion for reconsideration (doc. 37) is **DENIED**. Moreover, because this Court has already determined that any appeal from the Judgment would not be in good faith, and therefore he is not entitled to proceed in forma pauperis (doc. 28, at 2), Petitioner's motion to proceed in forma pauperis (doc. 39) is **DENIED AS MOOT**.

ORDER ENTERED at Augusta, Georgia, this 25th day of May, 2017.

/s/ J. Randal Hall

J. RANDAL HALL, CHIEF JUDGE

APPENDIX B

TERRANCE GERARD STANTON, Petitioner-Appellant, versus UNITED STATES OF AMERICA,
Respondent-Appellee.

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

2017 U.S. App. LEXIS 15171

No. 17-12075-E

July 19, 2017, Decided

Editorial Information: Prior History

Appeal from the United States District Court for the Southern District of Georgia. Stanton v. United States, 2017 U.S. Dist. LEXIS 55160 (S.D. Ga., Apr. 11, 2017)

Counsel TERRANCE GERARD STANTON, Petitioner - Appellant, Pro se,
EDGEFIELD, SC.

For UNITED STATES OF AMERICA, Respondent - Appellee: R.
Brian Tanner, U.S. Attorney's Office, SAVANNAH, GA; U.S. Attorney Service - Southern
District of Georgia, U.S. Attorney's Office, SAVANNAH, GA.

Judges: Charles R. Wilson, UNITED STATES CIRCUIT JUDGE.

Opinion

Opinion by: Charles R. Wilson

Opinion

ORDER:

Terrance G. Stanton moves for a certificate of appealability, in order to appeal the district court's denial of his 28 U.S.C. § 2255 motion to vacate his sentence. To merit a certificate of appealability, Stanton, 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, 478, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000). Stanton's motion for a certificate of appealability is DENIED because he failed to make the requisite showing.

Stanton's motion for leave to proceed *in forma pauperis* on appeal is DENIED AS MOOT.

/s/ Charles R. Wilson

UNITED STATES CI

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-12075-E

TERRANCE GERARD STANTON,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

Before: WILSON and JULIE CARNES, Circuit Judges.

BY THE COURT:

Terrance G. Stanton, has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's July 19, 2017, order denying his motions for a certificate of appealability and leave to proceed on appeal *in forma pauperis*. Upon review, Stanton's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.