

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6551

SYRON DEVON ROGERS,

Petitioner - Appellant,

v.

HAROLD W. CLARKE, Director of the Virginia Department of Corrections,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Arenda L. Wright Allen, District Judge. (2:14-cv-00310-AWA-TEM)

Submitted: November 16, 2017

Decided: November 20, 2017

Before GREGORY, Chief Judge, and TRAXLER and KEENAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Syron Devon Rogers, Appellant Pro Se. Susan Mozley Harris, Assistant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Syron Devon Rogers seeks to appeal the district court's order denying his Fed. R. Civ. P. 60(b) motion for reconsideration of the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Rogers has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, and dismiss the appeal. 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.

DISMISSED

Appendix B

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

SYRON DEVON ROGERS, #1036239,

v.

Civil No. 2:14-cv-310

HAROLD W. CLARKE,
Director, Virginia Department of Corrections.

ORDER

Before the Court is Petitioner Syron Devon Rogers' *pro se* Motion for Relief from Judgment, brought under Federal Rule of Civil Procedure 60(b)(6). ECF No. 43. His Motion follows the Court's denial of his Petition for Writ of Habeas Corpus and the concomitant Judgment entered against him. ECF Nos. 33, 34. Because the Motion reiterates a legal argument already advanced in the underlying habeas proceeding, it is improper under Rule 60(b) and, accordingly, must be denied.

I. BACKGROUND

Mr. Rogers' claims stem from his Norfolk Circuit Court convictions for second-degree murder and use of a firearm in the commission of second-degree murder. *See Devon Rogers v. Clarke (Rogers R. & R.)*, No. 2:14-cv-310, 2014 WL 11511670, at *1 (E.D. Va. Dec. 16, 2014), *adopted by* 2015 WL 11110948 (E.D. Va. Jan. 26, 2015). As a result of these convictions, he was sentenced to fifteen years' imprisonment on August 2, 2011, and remanded to the custody of the Commonwealth of Virginia. *See Commonwealth v. Rogers*, Nos. CR09003783-01, -02 (Va. Cir. Ct. Aug. 2, 2011).

After unsuccessfully pursuing his state post-conviction remedies, Mr. Rogers filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254, challenging the legality of his

confinement. ECF No. 1. In relevant part, Mr. Rogers argued that state prosecutors violated his rights under *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose a witness statement that he considers exculpatory. See Petition at 5-13, ECF No. 1; see also Pet.'s Response at 8-20, ECF No. 25. The Court referred his Petition and the Defendant's Motion to Dismiss the Petition, ECF No. 14, to a Magistrate Judge. The Magistrate Judge issued a Report and Recommendation that recommended the Court deny the Petition and grant Defendant's Motion to Dismiss. See *Rogers R. & R.*, 2014 WL 11511670, at *16. On January 26, 2015, the Court issued an Order adopting and approving the Magistrate Judge's findings, thereby denying the Petition, granting Defendant's Motion to Dismiss, and denying a certificate of appealability. See *Rogers v. Clarke (Rogers Final Order)*, No. 2:14-cv-310, 2015 WL 11110948, *1-3 (E.D. Va. Jan. 26, 2015). The Clerk entered Judgment that same day. ECF No. 34. Rogers thereafter sought a certificate of appealability from the United States Court of Appeals for the Fourth Circuit, which denied his request. See *Rogers v. Clarke*, 606 F. App'x 90, 90 (4th Cir. June 19, 2015). Mr. Rogers now moves under Rule 60(b) for relief from the Judgment. ECF No. 43.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 60(b) "authorizes a district court to grant relief from a final judgment for five enumerated reasons or for 'any other reason that justifies relief,'" under Rule 60(b)(6). *Aikens v. Ingram*, 652 F.3d 496, 500 (4th Cir. 2011) (quoting Fed. R. Civ. P. 60(b)(6)). While this "catch-all" provision "rests within the district court's equitable powers," *Nat'l Org. for Women v. Operation Rescue*, 47 F.3d 667, 669 (4th Cir. 1995) (per curiam), and "includes few textual limitations, its context requires that it may be invoked in only 'extraordinary circumstances' when the reason for relief from judgment does not fall within the list of enumerated reasons given in Rule 60(b)(1)-(5)." *Aikens*, 652 F.3d at 500 (quoting *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 n.11, 864 (1988)). "Such

circumstances will rarely occur in the habeas context.” *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005).

III. ANALYSIS

The instant Motion simply re-iterates one of the bases for relief already presented—and previously rejected—in Mr. Rogers’ habeas Petition. In his Motion, Mr. Rogers seeks relief from his Petition’s dismissal, arguing that state prosecutors violated his rights under *Brady v. Maryland*, 373 U.S. 83 (1963), by not disclosing a witness statement that he considers exculpatory. See Motion at 3-2, ECF No. 43. The argument is copied nearly verbatim from his Response to Defendant’s Motion to Dismiss the Petition, with minor party-name revisions and re-ordering of the paragraphs. Compare Pet.’s Response at 10-20, ECF No. 25, with Motion at 3-11, ECF No. 43.

Because of this, Mr. Rogers’ Motion “is nothing more than a request that the district court change its mind,” which “is not authorized by Rule 60(b).” *United States v. Williams*, 674 F.2d 310, 313 (4th Cir. 1982); see also *Aikens*, 652 F.3d at 512. As the Fourth Circuit has explained, “[t]o the extent that [a] post-judgment motion [seeks] to have the district court reconsider its ruling with respect to [a specific] issue, it [is] clearly improper, because Rule 60(b) does not authorize a motion merely for reconsideration of a legal issue.” *Williams*, 674 F.2d at 312; see also *Adkins v. N.C. Att’y Gen.*, 217 F.3d 837 (4th Cir. 2000) (unpublished table disposition) (upholding summary denial of a Rule 60(b) motion that merely restated argument from underlying § 2254 petition); *Robinson v. McKellar*, 872 F.2d 419 (4th Cir. 1989) (unpublished table disposition) (“In the motion for reconsideration, [petitioner] raised the same issues he raised in his habeas petition. Rule 60(b) does not authorize a motion merely for reconsideration of legal issues.”); *Roberts v. U.S. Parole Comm’n*, No. 7:14-cv-233, 2015 WL 4773305, at *1 (W.D. Va. Aug. 12, 2015).

In addition to constituting an improper use of Rule 60(b), Mr. Rogers' argument—far from being “extraordinary,” *Aikens*, 652 F.3d at 500—is no more persuasive than when first considered and rejected. The Court stands by its prior holding for the reasons previously given. *See Rogers R. & R.*, 2015 WL 11110948, at *10-15; *see also Rogers Final Order*, 2015 WL 11110948, at *2. In sum, because the Motion lacks merit and “is nothing more than a request that the [C]ourt change its mind,” *Williams*, 674 F.2d at 313, the Motion is unauthorized under Rule 60(b) and must be denied.

IV. CONCLUSION

For the reasons stated herein, Mr. Rogers' Motion for Relief from Judgment (ECF No. 43) is **DENIED**. To the extent necessitated by this holding, the Court also **DENIES** the certificate of appealability required by Rule 22(b) of the Federal Rules of Appellate Procedure because Mr. Rogers has failed to demonstrate a “substantial showing of the denial of a constitutional right.” *See Reid v. Angelone*, 369 F.3d 363, 369 (4th Cir. 2004) (requiring certificate of appealability for merits denials of Rule 60(b) motions to alter or amend judgment), *partial abrogation recognized by United States v. McRae*, 793 F.3d 392, 399-400 & n.7 (4th Cir. 2015).

Mr. Rogers is **ADVISED** that if he intends to appeal this Order and seek a certificate of appealability from the United States Court of Appeals for the Fourth Circuit, he must forward a written Notice of Appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia, 23510 within thirty days from the date of this Order.

The Clerk is **REQUESTED** to mail a copy of this Order to Petitioner Syron Devon Rogers.

IT IS SO ORDERED.



Arenda L. Wright Allen
United States District Judge

3-21, 2017
Norfolk, Virginia

FILED: December 28, 2017

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6551
(2:14-cv-00310-AWA-TEM)

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v.

HAROLD W. CLARKE, Director of the Virginia Department of Corrections

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O R D E R

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

Entered at the direction of the panel: Chief Judge Gregory, Judge Traxler and Judge Keenan.

For the Court

/s/ Patricia S. Connor, Clerk