

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-11728-C

FRANK L. AMODEO,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

Before: WILSON and JULIE CARNES, Circuit Judges.

BY THE COURT:

Frank Amodeo has filed a counseled motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's January 6, 2017, order denying a certificate of appealability, and denying as moot his motion for leave to proceed *in forma pauperis*, following the denial of his *pro se* motion to reopen his 28 U.S.C. § 2255 proceedings, pursuant to Fed. R. Civ. P. 60(b)(6), and his subsequent motion to alter or amend judgment, pursuant to Fed. R. Civ. P. 59(e). Upon review, his motion for reconsideration is DENIED because he has offered no meritorious arguments to warrant relief.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

No. 16-11728-C

FRANK L. AMODEO,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

**Appeal from the United States District Court
for the Middle District of Florida**

ORDER:

Frank L. Amodeo, a federal prisoner serving a 270-month sentence for tax fraud, filed an initial *pro se* motion to vacate his sentence pursuant to 28 U.S.C. § 2255 in 2011. The district court ordered Amodeo to file an amended § 2255 motion within 21 days on the standard § 2255 form and that complied with page-limit requirements, which Amodeo failed to do. The district court then dismissed the case without prejudice. Amodeo filed a motion to vacate the order of dismissal, which the district court denied. Amodeo filed an appeal, and this Court denied a certificate of appealability ("COA").

In January 2016, Amodeo filed a motion to reopen pursuant to Fed. R. Civ. P. 60(b)(6), in which he asserted that the district court improperly dismissed his § 2255 motion without considering the claims. He argued that the district court failed to liberally construe the document, improperly dismissed the case with prejudice, and failed to conduct the required inquiry into his competency. The district court denied the motion because it was untimely and failed to show extraordinary circumstances.

Then, Amodeo filed a motion to alter or amend the judgment, arguing that his factual innocence, the district court's denial of due process to the mentally ill and denial of "statutorily guaranteed counsel" constituted extraordinary circumstances justifying the reopening of his case. He further argued that the court improperly denied the Rule 60(b)(6) motion based on timeliness without conducting an evidentiary hearing concerning his mental condition at the time the initial § 2255 motion was filed. The district court denied the motion to alter or amend, concluding that Amodeo provided no basis justifying relief. The district court also denied a COA and *in forma pauperis* ("IFP") status on appeal, which he now seeks from this Court.

A COA is required to appeal the denial of a § 2255 motion or the denial of a Rule 59(e) or 60(b) motion in a § 2255 proceeding. 28 U.S.C. § 2253(c)(1)(B); *Jackson v. Crosby*, 437 F.3d 1290, 1295 (11th Cir. 2006) (stating that a COA is

required for an appeal of the denial of a Rule 60(b) motion in a habeas proceeding); *Perez v. Sec'y, Fla. Dep't of Corr.*, 711 F.3d 1263, 1264 (11th Cir. 2013) (stating that a COA is required to appeal the denial of a Rule 59(e) motion in a habeas proceeding).

To merit a COA, a petitioner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The petitioner must demonstrate that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Where the district court has denied a habeas petition in part on procedural grounds, the petitioner must show that jurists of reason would find debatable (1) whether the petition states a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Id.*

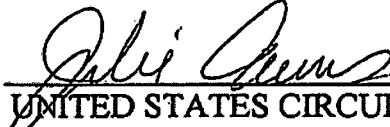
The appeal of a Rule 60(b) motion is limited to a determination of whether the district court abused its discretion in denying the motion. *Rice v. Ford Motor Co.*, 88 F.3d 914, 918-19 (11th Cir. 1996). Rule 60(b) allows a party to seek relief or reopen his case based upon the following limited circumstances: (1) mistake or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been discharged; and (6) “any other reason that justifies

relief.” Fed. R. Civ. P. 60(b). A Rule 60(b) motion must be made within a reasonable time. Fed. R. Civ. P. 60(c)(1).

Under Rule 59(e), a party may file a motion seeking to alter or amend a judgment. This Court reviews the denial of a Rule 59(e) motion for an abuse of discretion. *Mincey v. Head*, 206 F.3d 1106, 1137 (11th Cir. 2000). In order for a Rule 59(e) motion to be granted, a party must identify “newly-discovered evidence or manifest errors of law or fact.” *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (quotations omitted).

Here, reasonable jurists would not find the district court’s decisions debatable. First, the district court did not abuse its discretion in denying the Rule 60(b)(6) motion, as it was filed over three years after the district court’s judgment and this Court’s denial of a COA. *See* Fed. R. Civ. P. 60(c)(1). Additionally, Amodeo failed to show extraordinary circumstances that would warrant reconsideration. Contrary to his assertions, the district court did not improperly dismiss his § 2255 motion with prejudice, was not required to conduct an evidentiary hearing as to his mental capacity at the time of the filing, and did not fail to liberally construe his § 2255 motion. Second, the district court did not abuse its discretion in denying Amodeo’s Rule 59(e) motion to alter or amend, as the district court did not apply an incorrect legal theory and Amodeo did not provide new evidence or show manifest error. *See Arthur*, 500 F.3d at 1343.

Accordingly, Amodeo's motion for a COA is DENIED, and his motion for IFP status is DENIED AS MOOT.


UNITED STATES CIRCUIT JUDGE