

CERTIFIED COPY



United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 2, 2024

Decided October 8, 2024

Before

DIANE S. SYKES, *Chief Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1455

MICHAEL MEJIA,
Petitioner-Appellant,

v.

BRITTANY GREENE,
Respondent-Appellee.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 13 C 3403

Charles P. Kocoras,
Judge.

ORDER

Michael Mejia has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254, which we construe as an application for a certificate of appealability. This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED.

Appendix A

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

December 2, 2024

Before

DIANE S. SYKES, *Chief Judge*

JOSHUA P. KOLAR, *Circuit Judge*

CERTIFIED COPY



No. 24-1455

MICHAEL MEJIA,

Petitioner-Appellant,

v.

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

BRITTANY GREENE,

Respondent-Appellee.

No. 1:13-CV-3403

Charles P. Kocoras,
Judge.

ORDER

Petitioner-appellant filed a petition for rehearing and for rehearing en banc on November 12, 2024. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all members of the original panel have voted to deny panel rehearing. It is therefore ordered that the petition for rehearing and for rehearing en banc is DENIED.

Appendix B

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

Michael Mejia, (K83133),)
)
 Petitioner,)
) Case No. 13 C 3403
 v.)
) Hon. Charles P. Kocoras
)
 Cherryle Hinthorne, Warden,)
)
 Respondent.)

ORDER

Petitioner's motion to bring an amended habeas corpus petition (Dkt. 65) is denied for want of subject matter jurisdiction. Petitioner's remaining claim, Claim A, (Dkt. 1, p. 5; Dkt. 51) is denied on the merits. The Court declines to issue a certificate of appealability. Any pending motions are moot. The Clerk shall enter judgment in favor of Respondent and against Petitioner. Civil Case Terminated.

STATEMENT

Petitioner Michael Mejia, a prisoner at the Western Illinois Correctional Center, brought a 28 U.S.C. § 2254 habeas corpus petition challenging his first-degree murder and aggravated discharge of a firearm convictions from the Circuit Court of Cook County. The Court denied the petition and entered judgment in January 2014. (Dkt. 20, 21.) The Seventh Circuit dismissed Petitioner's appeal for want of jurisdiction because Petitioner brought a late appeal. *Mejia v. Pfister*, No. 14-3814 (7th Cir. Mar. 6, 2015).

The instant ruling centers on Claim A of the habeas corpus petition. Claim A alleges that Petitioner was ordered to serve 100% of his 30-year sentence in prison. (Dkt. 1, p. 5.) The Illinois Department of Corrections (IDOC), however, allegedly added an additional three-year mandatory supervised release (MSR) term. *Id.* Petitioner argues that the adding of the three-year MSR term by the IDOC violates his due process right.

The Court's original ruling denied Claim A as procedurally defaulted because the record before the Court at the time showed that Petitioner had failed to properly raise

the claim to the state courts. (Dkt. 21, pp. 6-7.) Several years after the dismissal, the Court granted Petitioner's Rule 60(b)(6) motion as to Claim A in light of the fact that he presented evidence demonstrating that he properly exhausted his claim to the state court.¹ (Dkt. 46.)

A prisoner is limited to one habeas corpus petition attacking his state judgment. 28 U.S.C. § 2244(b). However, he can bring a proper Rule 60 motion when that motion seeks to correct a "defect in the integrity of the federal habeas proceedings." *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005). In contrast, the prisoner cannot seek a second bite at the merits apple via a Rule 60 motion to challenge the Court's rejection of a prior claim or seek to bring a new claim. In sum, the Court is limited to correcting the prior "defect" in the proceeding. *Id.*

As mentioned, the defect in the prior proceeding was that the Court denied Claim A as procedurally defaulted, when later-provided evidence showed that the claim was not defaulted. As such, the remedy for correcting the "defect" in the prior proceeding is to proceed to the merits of Claim A. Petitioner, however, cannot bring any new claims beyond the original Claim A.

Petitioner has brought an amended petition (Dkt. 51) and a motion for leave to file a second amended petition (Dkt. 65). The first amended petition (Dkt. 51) is acceptable as it is simply restating Claim A from the original petition. In fact, the Court's order in granting the Rule 60 motion explicitly limited Petitioner to Claim A. (Dkt. 48.)

In contrast, Petitioner's present motion for leave to file a second amended petition is improper as it attempts to raise new claims beyond those in Claim A. Examples of these new claims include an alleged use of perjured testimony at his trial, a *Crawford v. Washington*, 541 U.S. 36 (2004), violation, and ineffective assistance of counsel. (Dkt. 65-1.) This attempt to bring new claims beyond the scope of Claim A violates the prohibition on unauthorized second or successive habeas corpus petitions. 28 U.S.C. § 2244(b). The motion for leave to amend is denied.

¹ The Court granted Petitioner's motion under Rule 60(b)(6). (Dkt. 48.) The day after granting the Rule 60 motion, Respondent's present counsel filed her appearance moving to substitute in place of the prior attorney who had left the Office of the Illinois Attorney General. (Dkt. 50.) The new attorney waited for more than three years to bring a motion for reconsideration of the Court's Rule 60 ruling. (Dkt. 67.) Respondent argued that the motion should have been addressed under Rule 60(b)(2), and as such, was untimely under Rule 60(c)'s one year limitation period. *Id.* The Court denied the request noting that Respondent's argument was itself untimely as it was raised multiple years after the Court's ruling. (Dkt. 70.) The one-year limitations period in Rule 60(c) is an affirmative defense subject to forfeiture and does not go to the Court's jurisdiction. *In re Cook Med., Inc.*, 27 F.4th 539, 543 (7th Cir. 2022).

APPENDIX D

Although the Court can reach the merits of Claim A through the previously granted Rule 60 motion, the Court concludes the claim is meritless allowing for immediate dismissal of this claim. In Illinois, MSR is automatically part of a sentence by operation of state law whether the MSR term is listed in the sentencing judgment or not. *Carrol v. Daugherty*, 764 F.3d 786, 788–89 (7th Cir. 2014); *Villanueva v. Anglin*, 719 F.3d 769, 771 n.1 (7th Cir. 2013); *Wofford v. Walker*, 464 F. App'x 533, 534–35 (7th Cir. Feb. 28, 2012) (non precedential opinions) (citations omitted) (noting that the IDOC does not add the MSR term to a prisoner's sentence in Illinois because "it was always part of [the prisoner's] sentence." As the district court explained, "the term of mandatory supervised release was a nondiscretionary component of the sentence that was imposed in 2000 when [the prisoner] was convicted. Even if the judgment does not say so, the mandatory supervised release was included in [the prisoner's] sentence by operation of law."); *Filipkowski v. Smith*, 2019 WL 932018, at *5 (N.D. Ill. Feb. 25, 2019). The MSR term was imposed on Petitioner at the moment he was sentenced by the state trial judge by operation of Illinois law. Petitioner's assertion that the IDOC violated his due process rights by adding the MSR term later is incorrect. There are no constitutional concerns. Claim A is denied.

The Court declines to issue a certificate of appealability under Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts because there is no substantial showing of a denial of a constitutional right in this case. *See Arredondo v. Huibregtse*, 542 F.3d 1155, 1165 (7th Cir. 2008) (citing 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Barefoot v. Estelle*, 463 U.S. 880, 893, & n.4 (1983)); *Davis v. Borgen*, 349 F.3d 1027, 1028 (7th Cir. 2003) (setting forth requirements for a certificate of appealability).

Petitioner is advised that this is a final decision ending his case in this Court. If Petitioner wishes to appeal, he must file a notice of appeal with this Court within thirty days of the entry of judgment. *See* Fed. R. App. P. 4(a)(1). Petitioner need not bring a motion to reconsider this Court's ruling to preserve his appellate rights. However, if Petitioner wishes the Court to reconsider its judgment, he may file a motion under Federal Rule of Civil Procedure 59(e) or 60(b). Any Rule 59(e) motion must be filed within 28 days of the entry of this judgment. *See* Fed. R. Civ. P. 59(e). The time to file a motion pursuant to Rule 59(c) cannot be extended. *See* Fed. R. Civ. P. 6(b)(2). A timely Rule 59(e) motion suspends the deadline for filing an appeal until the Rule 59(e) motion is ruled upon. *See* Fed. R. App. P. 4(a)(4)(A)(iv). Any Rule 60(b) motion must be filed within a reasonable time and, if seeking relief under Rule 60(b)(1), (2), or (3), must be filed no more than one year after entry of the judgment or order. *See* Fed. R. Civ. P. 60(c)(1). The time to file a Rule 60(b) motion cannot be extended. *See* Fed. R. Civ. P. 6(b)(2). A Rule 60(b) motion suspends the deadline for filing an

appeal until the Rule 60(b) motion is ruled upon only if the motion is filed within 28 days of the entry of judgment. *See* Fed. R. App. P. 4(a)(4)(A)(vi).



Charles P. Kocoras
United States District Judge

DATE: March 21, 2024