Appendix AA

United States Court of Appeals
for the Fourth Circuit

FILED: July 28, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6934
(7:18-cv-00595-EKD-JCH)

WESLEY BRIAN EARNEST

Petitioner - Appellant

v.

KEITH W. DAVIS, Warden; CHADWICK DOTSON

Respondents - Appellees

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 40. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk

Appendix AA

FILED: March 20, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6934, Wesley Earnest v. Chadwick Dotson
7:18-cv-00595-EKD-JCH

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

FILED: March 20, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6934, Wesley Earnest v. Chadwick Dotson
7:18-cv-00595-EKD-JCH

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A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6934

WESLEY BRIAN EARNEST,

Petitioner - Appellant,

v.

KEITH W. DAVIS, Warden; CHADWICK DOTSON,

Respondents - Appellees.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Elizabeth K. Dillon, Chief District Judge. (7:18-cv-00595-EKD-JCH)

Submitted: January 28, 2025 Decided: March 20, 2025

Before NIEMEYER and KING, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Wesley Brian Earnest, Appellant Pro Se. Katherine Quinlan Adelfio, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellees.

FILED: March 20, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6934
(7:18-cv-00595-EKD-JCH)

WESLEY BRIAN EARNEST

Petitioner - Appellant

v.

KEITH W. DAVIS, Warden; CHADWICK DOTSON

Respondents - Appellees

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed in part. A certificate of appealability is denied and the appeal is dismissed in part.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

PER CURIAM:

Wesley Brian Earnest seeks to appeal the district court's order denying his Fed. R. Civ. P. 60(b)(1), (6), and (d)(1) motions for relief from the district court's prior order dismissing as untimely his 28 U.S.C. § 2254 petition. We affirm in part, deny a certificate of appealability, and dismiss in part.

Earnest's motions are mixed Rule 60(b) motions/successive § 2254 petitions. *See Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005) (explaining distinction between true Rule 60(b) motion and Rule 60(b) motion that is actually successive habeas petition); *Richardson v. Thomas*, 930 F.3d 587, 595-96 (4th Cir. 2019) (same). When a § 2254 petitioner files a mixed Rule 60(b) motion and successive § 2254 petition, the district court should afford the petitioner an opportunity to elect between deleting the improper claims or having the entire motion treated as a successive petition. *United States v. McRae*, 793 F.3d 392, 394, 400 (4th Cir. 2015); *United States v. Winestock*, 340 F.3d 200, 207 (4th Cir. 2003); *abrogated in part on other grounds by McRae*, 792 F.3d 392. Although the district court did not afford Earnest that opportunity, we need not remand this case because the district court applied the Rule 60(b)(1), (6) standards to Earnest's claims and concluded that Earnest was not entitled to relief under those standards.

As to the district court's denial of the Rule 60(b)(1) motion and the court's refusal to consider a new affidavit in support of the Rule 60(b)(6) motion,[1] we are satisfied that

[1] Earnest has forfeited appellate review of the district court's conclusion that his claims under Rule 60(b)(6) could not proceed because they fell within the ambit of Rule 60(b)(1). *See* 4th Cir. R. 34(b); *Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014).

the district court did not abuse its discretion in ruling that those filings were untimely.[2] *See* Fed. R. Civ. P. 60(c)(1) (requiring motion under Rule 60(b)(1) to be made "no more than a year after the entry of the . . . order" and Rule 60(b)(6) to "be made within a reasonable time"); *Moses v. Joyner*, 815 F.3d 163, 167 (4th Cir. 2016) (stating standard of review and holding that district court did not abuse its discretion in finding untimely Rule 60(b)(6) "motion filed two-and-a-half years after the [movant] knew or should have known the basis for his [Rule] 60(b) claim"); *Park Corp. v. Lexington Ins. Co.*, 812 F.2d 894, 895 (4th Cir. 1987) (reviewing for abuse of discretion district court's denial of a Rule 60(b)(1) motion). We therefore affirm this portion of the appeal.

As to the district court's denial of the Rule 60(d) 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). *See generally United States v. McRae*, 793 F.3d 392, 400 & n.7 (4th Cir. 2015). 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). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 580 U.S. 100, 115-17 (2017). 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

[2] Earnest does not require a certificate of appealability to appeal the district court's timeliness determinations. *United States v. Williams*, 56 F.4th 366, 370 n.3 (4th Cir. 2023).

a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Earnest has not made the requisite showing. Accordingly, we deny Earnest's motion to amend the record. We deny a certificate of appealability and dismiss this portion of 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.

AFFIRMED IN PART,
DISMISSED IN PART

Appendix BB

United States District Court for the Western District of Virginia (Roanoke Division)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

WESLEY BRIAN EARNEST, Petitioner,	)	
v.	)	Civil Action No. 7:18-cv-00595
KEITH W. DAVIS, Warden, et al., Respondents.	)	By: Elizabeth K. Dillon United States District Judge

MEMORANDUM OPINION

Petitioner Wesley Brian Earnest, a Virginia inmate proceeding *pro se*, has filed three motions for relief from this court's judgment, entered September 30, 2020, finding his federal habeas petition under 28 U.S.C. § 2254 untimely. He filed one motion under Fed. R. Civ. P. 60(b)(1), one under Rule 60(b)(6), and one under Rule 60(d)(1). An identical memorandum in support was filed with each motion.[1] For the reasons stated below, the court will deny all three motions.

I. BACKGROUND

In November 2010, a jury found Earnest guilty of first-degree murder of his estranged wife on December 19, 2007, and recommended a sentence of life in prison. Following a pre-sentence report and sentencing hearing on January 25, 2011, the Amherst County Circuit Court entered a final judgment order on February 10, 2011, imposing a life sentence for first-degree murder. The details of the trial are stated exhaustively in this court's memorandum opinion of September 30, 2020. (Dkt. No. 29.) The Court of Appeals of Virginia affirmed Earnest's conviction and sentence. *Earnest v. Commonwealth*, 734 S.E.2d 680 (Va. Ct. App. 2012). The

[1] Earnest also filed a motion to exceed word count and page limit (Dkt. No. 46). Unlike the Federal Rules of Appellate Procedure, the procedural rules applicable in district courts do not place a limit on words and pages in briefs. Therefore, the court will deny this motion as moot.

Appendix BB

Supreme Court of Virginia refused his petition for appeal and denied his petition for rehearing on September 23, 2013. The United States Supreme Court denied his petition for certiorari on February 24, 2014.

Earnest filed a state petition for habeas corpus in the Amherst County Circuit Court on September 4, 2014, raising several alleged violations of due process (prosecutorial misconduct, denial of right to put on defense evidence of third-party guilt, and denial of a fair trial based on venue), ineffective assistance of counsel, and evidentiary issues. The circuit court wrote a lengthy opinion letter on February 16, 2017, and entered its final order denying Earnest's habeas petition on May 5, 2017. The Supreme Court of Virginia denied his habeas appeal on May 22, 2018, finding no error in the circuit court's judgment. The United States Supreme Court denied certiorari on October 15, 2018.

Earnest's § 2254 petition was received in this court on November 29, 2018. He certified mailing the petition on November 15, 2018, but the postmark on the envelope was November 28, 2018. Nothing in the record supports Earnest's claim that he delivered the paperwork to the prison mailroom on November 15, 2018, but the court used that date as the most favorable one for Earnest. As explained in this court's prior memorandum opinion (Dkt. No. 29), the statute of limitations for filing his federal habeas petition expired on November 13, 2018, after statutory tolling for his state habeas, rendering his federal petition untimely, either by two days or by 15 days, depending on when it was placed in the prison mail.

When given the opportunity to reply to the respondent's motion to dismiss as untimely, Earnest stated (1) that he thought he had to wait until the United States Supreme Court considered his petition for certiorari from the state habeas decision before he could file his federal petition and (2) he lacked access to the law library during prison lockdowns on 24 days

of the three and a half months before his petition was due. (*See* Dkt. Nos. 13 and 22.) Based on legal precedent from the United States Supreme Court and from several circuit courts of appeal, the court was constrained to find that Earnest's explanations failed to constitute the extraordinary circumstances required for equitable tolling. Accordingly, the court dismissed his petition as untimely.

Earnest appealed the dismissal to the United States Court of Appeals for the Fourth Circuit. The appellate court held that Earnest failed to show both that the court's procedural ruling was debatable and that he had a debatable claim of the denial of a constitutional right. The court denied him a certificate of appealability and dismissed the appeal. (Dkt. No. 36.) The United States Supreme Court denied his petition for certiorari on May 7, 2021. (Dkt. No. 42.)

On April 1, 2022, the court received Earnest's three motions for relief from judgment under various subsections of Rule 60 of the Federal Rules of Civil Procedure.

II. DISCUSSION

Earnest has moved for relief from judgment under Fed. R. Civ. P. 60(b)(1), 60(b)(6), and 60(d)(1). In the brief submitted to support these motions, Earnest states that the delay was caused by a prison official's three week delay in making copies for petitioner, and he implies that missing the statute of limitations by "two days" should have been excusable neglect, and that the court ruled incorrectly on equitable tolling and actual innocence. Different considerations apply under each of the procedural rules, and the court will discuss each one separately.

A. The Motion Under Rule 60(b)(1) is Untimely

Relief from a final judgment may be granted under Rule 60(b)(1) for "mistake, inadvertence, surprise, or excusable neglect." The term "mistake" encompasses errors of law made by a judge, including "misapplying controlling law to record facts." *Kemp v. United*

States, 545 U.S. ___, 142 S. Ct. 1856, 1862 n.2 (2022). "Neglect" includes inadvertence, mistake, or carelessness of a party, as well as intervening circumstances beyond the party's control. *Justus v. Clarke*, ___ F.4th ___, 2023 WL 5211380 at *4 (4th Cir. Aug. 15, 2023) (internal citations and quotations omitted). Earnest's brief in support of his three motions implies that the court erred in its prior ruling that neither equitable tolling nor actual innocence saved his untimely petition and that the brief time between the deadline and the date he filed should be considered "excusable neglect."

Motions under Rule 60(b)(1) must be filed "within a reasonable time" and "no more than a year after the entry of the judgment." Fed. R. Civ. P. 60(c)(1). The one-year limit is the "*outer* limit of what may be timely." *United States v. Williams*, 56 F.4th 366, 370 (2023). The one year runs "from the date the judgment was 'entered' in the district court; it does not run from the date of an appellate decision reviewing that judgment, nor does the pendency of an appeal toll the one-year period." *The Tool Box, Inc. v. Ogden City Corp.*, 419 F.3d 1084, 1088–89 (10th Cir. 2005) (citing cases from five other circuits reaching the same conclusion). Earnest's motion under Rule 60(b)(1) was filed April 1, 2022, just over 18 months after the court's decision of September 30, 2020, well over the one year deadline. The court will deny this motion.

B. Earnest has not Offered Reasons that Justify Relief Under Rule 60(b)(6)

Relief is available under Rule 60(b)(6) for "any other reason that justifies relief." Motions under this section must be filed within a "reasonable time," but they are not subject to the one-year outside limitation. This option is "available only when Rules 60(b)(1) through (b)(5) are inapplicable." *Kemp*, 142 S. Ct. at 1861. If the grounds for relief fall within the ambit of Rules 60(b)(1) through (b)(3), then a litigant may not use Rule 60(b)(6) to avoid the one year limit. *Wright v. Poole*, 81 F. Supp. 3d 280, 290 (S.D.N.Y. 2014); *Canslor v. Clarke*, No.

2:13cv116, 2016 WL 11410205 at *3 (E.D. Va. Feb. 29, 2016). As discussed in the previous section, excusable neglect in missing the statute of limitations and alleged mistake in applying the law to the facts in ruling on equitable tolling and actual innocence fall within Rule 60(b)(1). Therefore, they are not properly raised under Rule 60(b)(6).

The only new issue raised by Earnest concerns the affidavit of counselor Dennis Stephens in support of Earnest's claim that Stephens' delay in making the required copies of the petition was "official conduct" which prevented Earnest from complying with the time limit. To be proper for consideration under Rule 60(b)(6), the motion must be filed within a reasonable time and the moving party must demonstrate extraordinary circumstances. *Justus*, 2023 WL 5211380 at *4. The burden of proof is on the moving party to show that his motion is timely. *Moses v. Joyner*, 815 F.3d 163, 166 (4th Cir. 2016). What counts as a "reasonable time" is a fact-based inquiry that attempts to balance the interests of an aggrieved party from the hardships of potential injustice against the "deep respect for the finality of judgments engrained in our legal system." *Williams*, 56 F.4th at 370. Even a three and a half month delay in filing a Rule 60(b) motion was considered unreasonable when there was no valid reason for the delay. *Id.*

There is no valid reason for the delay in raising counselor Stephens' alleged conduct as cause for delay. When Earnest responded to the respondent's motion to dismiss, this delay was not mentioned. Rather, Earnest relied upon his misunderstanding of whether the petition for certiorari to the United States Supreme Court from his state habeas denial would toll the statute of limitations and upon lockdowns that closed the law library for approximately 24 days during the three and a half months before he filed his petition. (Pet'r's Resp. to Mot. to Dismiss at 2-4, Dkt. No. 13; Pet'r's Resp. to Second Mot. to Dismiss at 2-3, Dkt. No. 22.) Significantly, Earnest included an undated memo from counselor D. Stephens to corroborate the lockdowns, which

stated "because of restricted movement his opportunity for personal legal research may have been hampered." (Pet'r's Ex. I, Dkt. No. 22-1 at 16.) That memo, prepared by the same affiant, made no mention of a three-week delay in making copies for Earnest. Because Earnest clearly knew or should have known about the "official's" delay in copying his materials when he objected to the motion to dismiss, waiting more than 18 months after the final order to file a motion with this information is not within a reasonable time. Accordingly, the court will dismiss the motion under Rule 60(b)(6).

C. Earnest is not Entitled to an Independent Action for Relief from Judgment under Rule 60(d)(1)

Rule 60(d) provides that "This rule does not limit a court's power to: (1) entertain an independent action to relieve a party from a judgment, order, or proceeding . . ." *Id.* The motion filed by Earnest is not itself an independent action, as an independent action is usually a new case. *Liggins v. Clarke County School Bd.*, No. 5:09cv00077, 2014 WL 6460776 at *5 n.2 (W.D. Va. Nov. 17, 2014). For purposes of resolving this matter, the court will construe the motion as if it were an independent new action for relief from judgment.

An independent action is available "only to prevent a grave miscarriage of justice." *United States v. Beggerly*, 524 U.S. 38 (1998). To prevail in an independent action for relief, a party must show that (1) the judgment ought not to be enforced in equity and good conscience; (2) that he has a good defense to the claim on which the judgment is founded; (3) fraud, accident, or mistake which prevented the party from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; and (5) the absence of any adequate remedy at law. *Great Coastal Express, Inc., v. Int'l Brotherhood. Of Teamsters*, 675 F.2d 1349, 1358 (4th Cir. 1982); *Liggins*, 2014 WL 6460776 at *5.

Earnest seeks relief from this court's determination that his habeas petition is time-barred. Most of his arguments were already considered by the court at the time of the original ruling: Earnest did not state grounds for equitable tolling, nor did he meet the high threshold for actual innocence to avoid the statute of limitations. In arguing actual innocence, he continues to argue the trial evidence in the light most favorable to himself, without consideration for the valid inferences that could be (and were) drawn from the evidence by the jury. Neither an appellate court nor a habeas court may substitute its own interpretation of the facts for those found by the jury. An appellate court must accept the factual findings of the jury unless they are plainly wrong or have no evidentiary support; a trial court's decision is not plainly wrong unless no rational trier of fact could have reached that decision. *Glass v. Commonwealth*, 867 S.E.2d 500, 502–03 (Va. Ct. App. 2022). Likewise, "the role of a federal habeas court is to guard against extreme malfunctions in the state criminal justice systems, . . . not to apply *de novo* review of factual findings and to substitute its own opinions for the determination made" by the state courts. *Davis v. Ayala*, 576 U.S. 257, 276 (2015) (internal quotations and citations omitted).

Nothing Earnest has offered rises to the level required by the actual innocence standard. For example, Earnest knew before trial that the high school security system had video surveillance. Notwithstanding his allegations that the prosecution hid or destroyed the video, the state court already ruled that the prosecution never had the video. Earnest's later unsupported allegation that an attorney for the school board said otherwise changes nothing, as the video is still not available. Nor would the sudden appearance of the video, showing that Earnest was still in Chesapeake at 4:00 p.m. on the date of his estranged wife's death, change the analysis. The Commonwealth at trial did not dispute that Earnest was in Chesapeake at 4:00; rather, their theory of the case was that Earnest had time to make the drive to Bedford after 4:00 p.m. and

then kill her, and there was evidence to support that theory. Defense evidence to the contrary was rejected by the jury. A video showing that he was in Chesapeake at 4:00 p.m. does nothing to contradict the evidence that he still had time to drive to Bedford to commit the crime. An independent action for relief from judgment is not a mechanism for re-arguing the same issues originally argued in his habeas petition. He has not met the actual innocence requirements for avoiding the statute of limitations under *Schlup v. Delo*, 513 U.S. 298, 324 (1995).

The only new matter offered by Earnest, the affidavit of D. Stephens, could have been obtained in time for use at the original habeas hearing. Earnest was certainly aware of how long it took to receive his copies from the counselor, and he is at fault for failing to provide this information or present this evidence when he responded to the motion to dismiss as untimely. Because he is responsible for his own failure to provide the evidence, he cannot prevail in an independent action for relief from judgment.[2] The court will also deny this motion.

III. CONCLUSION

For the reasons stated, Earnest's motions for relief from judgment will be denied. An order in accord with this opinion will be entered.

Entered: September 1, 2023.

/s/ Elizabeth K. Dillon
Elizabeth K. Dillon
United States District Judge

[2] Because his own fault contributed to the situation, barring Earnest from relying on this equitable remedy of relief from judgment, the court need not address the other requirements for successfully maintaining an independent action for relief. The court offers no opinion on whether the new information could or would have made a difference in the court's initial decision on timeliness.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

WESLEY BRIAN EARNEST, Petitioner, v. KEITH W. DAVIS, Warden, et al., Respondents.	)))))))	Civil Action No. 7:18-cv-00595 By: Elizabeth K. Dillon United States District Judge

FINAL ORDER

In accordance with the Memorandum Opinion entered this day, it is hereby ORDERED that:

(1) Petitioner's motion to exceed word limit and page count (Dkt. No. 46) is DENIED as moot.

(2) Petitioner's motion to set aside judgment pursuant to Rule 60(b)(1) (Dkt. No. 47) is DENIED.

(3) Petitioner's motion to set aside judgment pursuant to Rule 60(b)(6) (Dkt. No. 48) is DENIED.

(4) Petitioner's motion for independent action to set aside judgment pursuant to Rule 60(d)(1) (Dkt. No. 49) is DENIED.

(5) This action is STRICKEN from the active docket of this court.

The Clerk is directed to send copies of this Order and the accompanying memorandum opinion to Mr. Earnest and counsel for respondents.

Entered: September 1, 2023.

/s/ Elizabeth K. Dillon
Elizabeth K. Dillon
United States District Judge

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