IN THE SUPREME COURT OF THE UNITED STATES

ANTONIO PROPHET,
Petitioner.

v. **Case No.: _____**

JONATHAN FRAME, Superintendent,
Mount Olive Correctional Complex,
Respondent.

Appendix

Antonio Prophet, *pro se*
Prisoner #3484869
Mount Olive Correctional Complex
One Mountainside Way
Mount Olive, WV 25185

IN THE SUPREME COURT OF THE UNITED STATES

ANTONIO PROPHET,
Petitioner.

v. **Case No.: _____**

JONATHAN FRAME, Superintendent,
Mount Olive Correctional Complex,
Respondent.

Appendix A:

Complete Copy of the 4th Circuit Court of Appeals' ***Per Curiam Opinion*** Denying Petitioner's Motion for a Certificate of Appealability. Filed: October 1, 2025.

Antonio Prophet, *pro se*
Prisoner #3484869
Mount Olive Correctional Complex
One Mountainside Way
Mount Olive, WV 25185

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-6600

ANTONIO PROPHET,

Petitioner - Appellant,

v.

RALPH TERRY, Acting Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. Thomas S. Kleeh, Chief District Judge. (1:16-cv-00178-TSK)

Submitted: September 26, 2025 Decided: October 1, 2025

Before NIEMEYER, WYNN, and THACKER, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam opinion.

Antonio Prophet, Appellant Pro Se. Andrea Nease Proper, Michael Ray Williams, OFFICE OF THE ATTORNEY GENERAL OF WEST VIRGINIA, Charleston, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

Appendix A

PER CURIAM:

Antonio Prophet appeals the district court's order treating his Fed. R. Civ. P. 60(b) motion as a mixed true Rule 60(b) motion/successive 28 U.S.C. § 2254 petition and denying the motion. For the following reasons, we affirm in part, deny a certificate of appealability, dismiss in part, and deny authorization to file a successive § 2254 petition.

A certificate of appealability is not required for us to review the district court's determination that Prophet's Rule 60(b) motion was, in part, an unauthorized successive habeas petition; we review that determination de novo. *United States v. McRae*, 793 F.3d 392, 397, 400 (4th Cir. 2015). The district court correctly found that some of the arguments in Prophet's motion were successive attacks on his convictions for which he had not obtained prefiling authorization and that the court was without jurisdiction to consider those claims. We affirm the district court's dismissal of those claims.

The district court also correctly found that Prophet's allegation of fraud on the court by Respondent was a true Rule 60 claim. As we explained in *McRae*, if "a motion presents claims subject to the requirements for successive applications as well as claims cognizable under Rule 60(b), the district court should afford the applicant an opportunity to elect between deleting the improper claims or having the entire motion treated as a successive application." *Id.* at 400 (brackets omitted). Although the district court did not offer Prophet a chance to remove the improper claims from his motion, a remand for the court to do so is unnecessary because the court addressed the true Rule 60(b) claim on the merits and concluded that Prophet was not entitled to relief.

Additionally, Prophet may not appeal the portion of the district court's order denying his true Rule 60(b) claim for relief from the court's prior order denying relief on his § 2254 petition unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). 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 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 a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012). We have independently reviewed the record and conclude that Prophet has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss Prophet's appeal of the district court's denial of his true Rule 60(b) challenge.

Finally, consistent with our decision in *United States v. Winestock*, 340 F.3d 200, 208 (4th Cir. 2003), we construe Prophet's notice of appeal and appellate brief as an application to file a second or successive § 2254 petition. Upon review, we conclude that Prophet's claims do not meet the relevant standard. *See* 28 U.S.C. § 2244(b)(2). We therefore deny Prophet authorization to file a successive § 2254 petition.

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

IN THE SUPREME COURT OF THE UNITED STATES

ANTONIO PROPHET,
Petitioner.

v. **Case No.:** _____

JONATHAN FRAME, Superintendent,
Mount Olive Correctional Complex,
Respondent.

Appendix B:

Complete Copies of the Northern District Court's ***Order Denying Relief Under Rule 60.***
Filed: May 22, 2024.

Antonio Prophet, *pro se*
Prisoner #3484869
Mount Olive Correctional Complex
One Mountainside Way
Mount Olive, WV 25185

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG

ANTONIO PROPHET,

Petitioner,

v. **Civil Action No. 1:16-CV-178**
(Judge Kleeh)

RALPH TERRY,
Acting Warden,

Respondent.

ORDER DENYING RELIEF UNDER RULE 60

Pending before this Court are several motions. On March 5, 2024, petitioner filed Petitioner's Motion to Reopen Case or to Obtain Relief from the Final Judgment of the Court Under Rule 60(b)(4), (b)(5), and (b)(6) and/or Rule 60(d)(3) for Fraud on the Court [ECF No. 122]; Petitioner's Motion to Recuse Magistrate Judge Michael J. Aloi and District Judge Thomas S. Kleeh from Ruling or in Anyway (sic) Participating in this Motion or Case [ECF No. 123]; and Petitioner's Motion for Leave to Exceed Page Limits or for any Other Shortcomings Found Herein; Petitioner's Motion for Counsel and for Epedited (sic) Review [ECF No. 124]. On April 18, 2024, petitioner filed Petitioner's Renewed Motion for Immediate Court-Assigned Counsel, and for Emergency and Expedited Review, and for an Evidentiary Hearing. ECF No. 128. On April 23, 2024, petitioner filed Petitioner's Motion and Affidavit to Disqualify Magistrate Judge Michael J. Aloi and District Judge Thomas S. Kleeh from Ruling on or in Any Way Participating in the Motion (Rule

Appendix B

60(b)) Previously Filed by the Petitioner. ECF No. 132. For the reasons that follow, the motions will be denied.

I. BACKGROUND

In its Order dismissing petitioner's § 2254 petition, this Court summarized Prophet's underlying criminal case:

> In 2012, a jury in the Circuit Court of Berkeley County, West Virginia, convicted Petitioner of two counts of first-degree murder[1] and one count of first-degree arson. ECF No. 13-3 at 4. The jury did not recommend mercy on either of the murder convictions. ECF No. 13-2 at 3. The trial court sentenced him to a determinate term of life without the possibility of parole on each murder conviction and to a determinate term of twenty (20) years on the arson conviction, with all sentences to run consecutively. Id.
>
> Petitioner appealed his conviction to the Supreme Court of Appeals of West Virginia ("SCAWV"), which affirmed the trial court's conviction. ECF No. 52-15. Meanwhile, he petitioned the Circuit Court of Berkeley County for a writ of habeas corpus, which it summarily dismissed after directing Respondent to answer certain claims. ECF Nos. 13-3, 13-4. Petitioner appealed the summary dismissal to the SCAWV, which denied him relief via Memorandum Decision. ECF No. 13-2.

ECF No. 99 at 1-2.

[1] Petitioner was charged with the murder of Angela Devonshire and her three-year-old son, Andre White.

PROPHET v. BALLARD **1:16CV178**

ORDER DENYING RELIEF UNDER RULE 60

On August 24, 2016, petitioner filed a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody. ECF No. 1. On September 2, 2016, petitioner refiled on the court-approved form. ECF No. 13. On May 2, 2017, Magistrate Judge Seibert directed the respondent to file an answer to the petition. ECF No. 42. On August 16, 2017, the respondent filed an answer, as well as a motion to dismiss and memorandum in support. ECF Nos. 52, 53, & 55. Respondent argued that petitioner's claims had not all been properly exhausted through the state habeas process and argued his claims should be dismissed without prejudice. On August 28, 2017, petitioner filed a response in opposition to the motion and a reply to the response to the petition. ECF Nos. 61 & 62. On February 6, 2018, Magistrate Judge Aloi entered a Report and Recommendation ("R&R"), recommending that the petition be denied and dismissed without prejudice as unexhausted. ECF No. 68. Petitioner filed objections to the R&R on February 20, 2018. ECF No. 71. On March 28, 2018, Judge Keeley entered an Order adopting the R&R in part, dismissing some of petitioner's claims and remanding a number of claims back to Magistrate Judge Aloi for consideration on the merits after petitioner abandoned unexhausted claims. ECF No. 73

at 30.

On April 3, 2018, Magistrate Judge Aloi entered a second order to show cause, directing the respondent to file a response pertaining to the remaining claims of the petition. ECF No. 75. On May 3, 2018, respondent filed a response and a motion for summary judgment and memorandum in support. ECF Nos. 80, 81, & 82. On May 31, 2018, petitioner filed his reply. ECF No. 90. On February 21, 2019, Magistrate Judge Aloi entered a second R&R, recommending that the petition be denied and dismissed for failure to state a claim upon which relief can be granted. ECF No. 96. On March 6, 2019, petitioner filed objections to the R&R. ECF No. 98. On August 19, 2019, this Court entered an Order adopting the R&R, granting summary judgment, and denying and dismissing the petition with prejudice. ECF No. 99.

Petitioner appealed the dismissal; on September 16, 2019, the Fourth Circuit remanded the case for the limited purpose of permitting this Court to supplement the record with an order granting or denying a certificate of appealability. ECF No. 108. The next day, this Court denied a certificate of appealability. ECF No. 109. On October 15, 2020, the Fourth Circuit denied petitioner's motion for a certificate of appealability and

dismissed his appeal. ECF No. 115. On November 24, 2020, the Fourth Circuit denied a petition for rehearing. ECF No. 118. On April 14, 2021, petitioner filed a writ of certiorari with the Supreme Court of the United States, which the Court denied on June 2, 2021. ECF Nos. 120 & 121.

II. MOTIONS FOR RECUSAL

First, the Court turns to Petitioner's Motion to Recuse Magistrate Judge Michael J. Aloi and District Judge Thomas S. Kleeh from Ruling or in Anyway (sic) Participating in this Motion or Case and Petitioner's Motion and Affidavit to Disqualify Magistrate Judge Michael J. Aloi and District Judge Thomas S. Kleeh from Ruling on or in Any Way Participating in the Motion (Rule 60(b)) Previously Filed by the Petitioner. ECF Nos. 123 & 132. In the Motions, petitioner states that his Rule 60(b) seeks relief based on fraud upon the Court and an "officer conspiracy to defraud Petitioner out of his U.S. Constitutional rights in the State and Federal courts; a conspiracy and conflict-of-interest which was apparent on the superficial face of the State Court record." ECF No. 123 at 1-2. Further, he alleges that Magistrate Judge Aloi and the undersigned, by ruling on petitioner's earlier § 2254 petition, are involved in said conspiracy: "Petitioner believes

that Magistrate Judge Aloi and District Judge Kleeh had to have noticed said conflict and overarching conspiracy to defraud Petitioner, yet they did nothing about—not even reporting it to the Office of Disciplinary Counsel, as was their duty—which makes them part of it." ECF No. 123 at 2. Thus, petitioner seeks recusal of Magistrate Judge Aloi and of the undersigned from considering petitioner's Rule 60(b) motion.

Under 28 U.S.C. § 455, "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). A judge must also disqualify himself if "he has a personal bias or prejudice concerning a party ...." 28 U.S.C. § 455(b)(1). "Disqualification is required if a reasonable factual basis exists for doubting the judge's impartiality. The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's impartiality[.]" In re Beard, 811 F.2d 818, 827 (4th Cir. 1987). "[A] reasonable outside observer is not a person unduly suspicious or concerned about a trivial risk that a judge may be biased. There is always some risk of bias: to constitute grounds for disqualification, the probability that a judge will decide a case

on a basis other than the merits must be more than trivial." United States v. DeTemple, 162 F.3d 279,287 (4th Cir. 1998) (internal citations omitted). However, § 455 "does not require a judge to recuse himself because of 'unsupported, irrational, or highly tenuous speculation,'" Id. (citation omitted).

Petitioner's basis for recusal is based on Magistrate Judge Aloi and the undersigned's previous rulings and unspecified "other issues Petitioner had with Magistrate Judge Aloi's and District Judge Kleeh's handling of [petitioner's] case." ECF No. 123 at 2. "[J]udicial rulings alone almost never constitute valid basis for a bias or partiality recusal motion." Liteky v. United States, 510 U.S. 540, 541, 114 S. Ct. 1147, 1150 (1994)(citation omitted). "Alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." Shaw v. Martin, 733 F.2d 304, 308 (4th Cir. 1984). The Court finds that petitioner's Motion contains no cognizable basis for recusal and the Motions [**ECF Nos. 123 & 132**] are therefore **DENIED**.

III. MOTIONS FOR EXCESS PAGES, APPOINTMENT OF COUNSEL, AND EXPEDITED REVIEW

Next, petitioner has filed Petitioner's Motion for Leave to Exceed Page Limits or for Any Other Shortcomings Found Herein; Petitioner's Motion for Counsel and for Expedited Review, filed March 5, 2024. ECF No. 124. Likewise, on April 18, 2024, petitioner filed a Renewed Motion for Immediate Court-Assigned Counsel, and for Emergency and Expedited Review, and for an Evidentiary Hearing. ECF No. 128. Insofar as petitioner seeks leave to exceed the page limitation for his Rule 60(b) motion, the motion is hereby **GRANTED**.

Turning to petitioner's request for the Court to appoint counsel, the Court finds that the motion should be denied. The Fourth Circuit Court of Appeals has recognized that "[t]here is no right to counsel in post-conviction proceedings." Hagie v. Pinion, 995 F.2d 1062 (4th Cir. 1993) (citing Pennsylvania v. Finley, 481 U.S. 551, 556-57 (1987)). In Pennsylvania v. Finley, the Supreme Court stated "the equal protection guarantee of the Fourteenth Amendment does not require the appointment of an attorney for an indigent appellant just because an affluent defendant may retain one. 'The duty . . . under our cases is not to duplicate the legal arsenal that may be privately retained by a criminal defendant in a continuing effort to reverse his

conviction, but only to assure the indigent defendant an adequate opportunity to present his claims . . . .'" 481 U.S. at 556 (quoting Ross v. Moffitt, 417 U.S. 600, 616 (1974)). Accordingly, the request to appoint counsel is **DENIED**.

In the same motion, petitioner seeks "Emergency and expedited relief." ECF No. 124 at 2. Petitioner alleges that his trial attorney "is actively trying to have Petitioner murdered." Id. Plaintiff does not provide further information on this bold allegation, although in petitioner's subsequent Motion [ECF No. 128], petitioner alleges that his trial counsel is acting "in concert with other high-ranking officers of the court" including petitioner's state habeas court judge, to have petitioner murdered. ECF No. 128 at 2. Petitioner has not provided any plausible information to lead the Court to believe that he is in danger. Regardless, as this Order rules on the pending Motions, the request for expedited review is **DENIED AS MOOT**.

Finally, insofar as petitioner now asks for the Court to conduct an evidentiary hearing, the Court sees no need for such a hearing and the motion is **DENIED**.

Accordingly, Petitioner's Motion for Leave to Exceed Page Limits or for any Other Shortcomings Found Herein; Petitioner's

ORDER DENYING RELIEF UNDER RULE 60

Motion for Counsel and for Expedited Review [**ECF No. 124**] is hereby **GRANTED** in part and **DENIED** in part, and Petitioner's Renewed Motion for Immediate Court-Assigned Counsel, and for Emergency and Expedited Review, and for an Evidentiary Hearing [**ECF No. 128**] is **DENIED.**

IV. MOTION FOR RECONSIDERATION

The passage of the AEDPA amended 28 U.S.C. § 2254 and other habeas statutes:

> The AEDPA effected a number of substantial changes regarding the availability of federal postconviction relief to individuals convicted of crimes in federal and state courts. Of particular importance here are the provisions of AEDPA codifying and extending judicially constructed limits on the consideration of second and successive applications for collateral relief. See Felker v. Turpin, 518 U.S. 651 … (1966). Under the AEDPA, an individual may not file a second or successive § 2254 petition for writ of habeas corpus or § 2255 motion to vacate sentence without first receiving permission to do so from the appropriate circuit court of appeals.

In re Vial, 115 F.3d 1192, 1194 (4th Cir. 1997) (footnote omitted). The "gatekeeping mechanism" created by the AEDPA amended § 2254(b) to provide:

> The prospective applicant must file in the court of appeals a motion for leave to file a

> second or successive habeas application in the district court. § 2244(b)(3)(A). A three-judge panel has 3 days to determine whether "the application makes a prima facie showing that the application satisfies the requirements of" § 2244(b). § 2244(b)(3)(c); see §§ 2244(b)(3)(B), (D).

Felker, 516 U.S. at 657.

As this Court has previously summarized, the AEDPA imposes limitations on the consideration of Rule 60(b) motions containing habeas claims:

> The Supreme Court of the United States has directed district courts to construe Rule 60(b) motions containing certain habeas claims as second or successive habeas petitions. Gonzalez v. Crosby, 545 U.S. 524, 531 (2005). When a petitioner moves under Rule 60(b) to reopen his § 2254 petition because he advances a new claim, has discovered new evidence, or the law has changed, the motion is "in substance a successive habeas petition and should be treated accordingly." Id.
>
> A Rule 60(b) motion advances a new claim and should be treated as a successive habeas petition when it "seeks to add a new ground for relief" or "attacks the federal court's previous resolution of a claim on the merits." Id. at 532; see also [U.S. v.] McRae, 793 F.3d [392,] 397. However, when a Rule 60(b) motion alleges a "defect in the integrity of federal habeas proceedings," the Court must consider the motion under Rule 60(b). Gonzalez, 545 U.S. at 532; McRae, 793 F.3d at 397.

Widmyer v. Ballard, No. 1:10-CV-84, 2023 WL 5986466, at *2-3 (N.D.W. Va. Sept. 14, 2023).

Petitioner labels his motion as one brought under 60(b)(4), (b)(5), (b)(6), and (d)(3). Petitioner frames his argument as being variously based on the judgment being void, that applying the judgment is no longer equitable, he alleges that the vast conspiracy perpetuated by state and federal officials constitutes "any other reason justifying relief" and fraud upon this Court.

To the extent petitioner's Motion under 60(b) is brought based on newly discovered evidence of fraud perpetuated at the state-court level, even if the Motion was timely, it would be barred as a successive § 2254 petition. Unlike petitioner's argument for the application of Rule 60(d)(3) (below), his claims that fraud was committed at the state-court level clearly present new claims attacking the constitutionality of his state conviction. As such, they should be treated as a successive habeas petition. Petitioner has not received permission from the Fourth Circuit to file a successive habeas petition, and the motion must therefore be **DENIED**.

Further, even considered under Rule 60(b), petitioner's Motion is untimely. Insofar as petitioner brings this Motion

under 60(b), it is clear that it is properly considered as one brought under 60(b)(2), for "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)" or under 60(b)(3), for "fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party." Fed. R. Civ. P. 60(b)(2) & (3).

Despite how petitioner labels his claims, it is clear Rule 60(b)(4), (5), and (6) are inapplicable. Rule 60(b)(4) allows relief from a final judgment when "the judgment is void." "An order is 'void' for purposes of Rule 60(b)(4) only if the court rendering the decision lacked personal or subject matter jurisdiction or acted in a manner inconsistent with due process of law." Wendt v. Leonard, 431 F.3d 410, 412 (4th Cir. 2005); see also Baumlin & Ernst, Ltd. v. Gemini, Ltd., 637 F.2d 238, 242 (4th Cir. 1980) ("Error . . .does not make the judgment void."). Rule 60(b)(5) allows relief, for the purposes of petitioner's argument when "applying [the judgment] prospectively is no longer equitable." Fed.R.Civ.P. 60(b)(5). The clause permits the Court to grant relief when "a significant change either in factual conditions or in law renders continued enforcement detrimental to

the public interest." Horne v. Flores, 557 U.S. 433, 129 S. Ct. 2579, 2585 (2009) (quotation omitted). Further, although 60(b)(6) includes the catchall "any other reason that justifies relief," such relief is "mutually exclusive from the other grounds listed in 60(b). Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 393 (1993).

In contrast, petitioner contends that relief should be granted based on

> evidence which proves a multi-state-agency conspiracy to conceal the existence and significance of certain court documents which were in the Respondent's possession and which would have provided substantial strength and vitality to Petitioner's 2254 claims for relief.

ECF No. 122 at 10. Thus, petitioner's motion should be construed as one under 60(b)(2), for "newly discovered evidence" or under 60(b)(3) for fraud or misconduct by an opposing party. Both subsections are subject to the requirement that they be made "no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c)(1). The Motion was filed March 5, 2024, over four years after this Court dismissed the § 2254 petition. Petitioner cannot circumvent the timing requirement by simply labelling his arguments under 60(b)(4)-(6).

Thus, insofar as he brings claims under 60(b), the motion is untimely.

Finally, petitioner attempts to characterize his claims under Rule 60(d)(3), which states that Rule 60 does not limit a court's power to "set aside judgment for fraud on the court." "[R]elief under Rule 60(d)(3) is only available where the fraud involves 'an intentional plot to deceive the judiciary [and] ... touch[es] on the public interest in a way that fraud between individual parties generally does not.'" United States v. Conrad, 675 F. App'x 263, 264 (4th Cir. 2017) (quoting Fox ex rel. Fox v. Elk Run Coal Co., Inc., 739 F.3d 131, 136 (4th Cir. 2014)). "[F]raud upon the court includes fraud by bribing a judge, or tampering with a jury, or fraud by an officer of the court, including an attorney." In re Genesys Data Techs., Inc., 204 F.3d 124, 130 (4th Cir. 2000).

Petitioner provides two theories for fraud upon the Court. First, he contends that the attorneys for the State committed fraud upon the Court by "intentionally omitting from its Exhibits court documents required to be included therein by Rule 5 [of the Rules Governing Section 2254 Cases in the United States District Courts] and by the standards of legal ethics." Specifically, petitioner alleges that counsel for respondent violated the rule by failing

to provide this Court with petitioner's "Brief of Petitioner for Rehearing" which his counsel filed in the Supreme Court of Appeals of West Virginia on June 27, 2014. See ECF No. 122-2 at 81. The Court notes that Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts requires the respondent to file, inter alia, "any brief that the petitioner submitted in an appellate court contesting the conviction or sentence, or contesting an adverse judgment or order in a post-conviction proceeding." SECT 2254 Rule 5(d)(1). There is no requirement that every motion made in the appellate court be filed with the answer in the § 2254, and it does not appear that a motion for rehearing is covered by the rule. Regardless, this document was already a part of the record when the Court considered petitioner's habeas petition. See ECF No. 1-12. Thus, despite petitioner's claim, respondent can hardly be accused of "tricking the federal courts into believing that the Petitioner had not raised Federal Constitutional claims in the State court."[2] ECF No. 122 at 7.

Petitioner's second theory of fraud upon the Court, similar

[2] Further, although respondent's answer did not include the motion itself, the record submitted by the respondent contained a number of references to the motion, and Magistrate Judge Aloi's Report and Recommendation referenced the motion. ECF No. 68 at 10.

to his motion to disqualify, alleges that Magistrate Judge Aloi and the undersigned were aware of obvious "treachery committed during the State court proceedings" and that by ruling against petitioner, this conspiracy "may have actually begun to seep into the WV federal district courts." ECF No. 122 at 16-17. This claim relies on circular logic and is frivolous: petitioner contends he was denied habeas relief because the court conspired against him; his support for the claim that the court conspired against him is that he was denied habeas relief. He likewise claims that the Court was tricked by the respondent concealing documents, while simultaneously claiming that the respondent's "treachery" was "apparent on the face of the Federal record the entire time, and was presumably obvious to anyone with proper legal education, training, and background." ECF No. 122 at 16. Petitioner has not provided any non-frivolous basis for a finding of fraud on the court and the motion should be denied.

Accordingly, Petitioner's Motion to Reopen Case or to Obtain Relief from the Final Judgment or Order of the Court Under Rule 60(b)(4), (b)(5), and (b)(6) and/or Rule 60(d)(3) for Fraud on the Court [**ECF No. 122**] is hereby **DENIED**.

V. CONCLUSION

In summary:

- Petitioner's Motion to Reopen Case or to Obtain Relief from the Final Judgment or Order of the Court Under Rule 60(b)(4), (b)(5), and (b)(6) and/or Rule 60(d)(3) for Fraud on the Court [**ECF No. 122**] is **DENIED;**
- Petitioner's Motion to Recuse Magistrate Judge Michael J. Aloi and District Judge Thomas S. Kleeh from Ruling on or in Anyway Participating in this Motion or Case and Petitioner's Motion and Affidavit to Disqualify Magistrate Judge Michael J. Aloi and District Judge Thomas S. Kleeh from Ruling on or in Any Way Participating in the Motion (Rule 60(b)) Previously Filed by Petitioner [**ECF Nos. 123 & 132**] are **DENIED;**
- Petitioner's Motion for Leave to Exceed Page Limits or for any Other Shortcomings Found Herein; Petitioner's Motion for Counsel and for Epedited (sic) Review [**ECF No. 124**] is **GRANTED** in part as to the leave to exceed page limits and **DENIED** as to the motion for counsel and for expedited review;
- Petitioner's Renewed Motion for Immediate Court-Assigned Counsel, and for Emergency and Expedited Review, and for an

PROPHET v. BALLARD **1:16CV178**

ORDER DENYING RELIEF UNDER RULE 60

Evidentiary Hearing [**ECF No. 128**] is **DENIED**; and

It is so **ORDERED**.

The Clerk is **DIRECTED** to mail a copy of this Order to the *pro se* petitioner and transmit copies of this Order to any counsel of record.

DATED: May 22, 2024.

Tom S Kleeh

THOMAS S. KLEEH, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA

IN THE SUPREME COURT OF THE UNITED STATES

ANTONIO PROPHET,
Petitioner.

v. **Case No.:** _____

JONATHAN FRAME, Superintendent,
Mount Olive Correctional Complex,
Respondent.

Appendix C:

Complete Copy of the 4th Circuit Court of Appeals' ***Order*** Denying Petitioner's Petition for Rehearing *En Banc*. Filed: November 4, 2025.

Antonio Prophet, *pro se*
Prisoner #3484869
Mount Olive Correctional Complex
One Mountainside Way
Mount Olive, WV 25185

FILED: November 4, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-6600
(1:16-cv-00178-TSK)

ANTONIO PROPHET

Petitioner - Appellant

v.

RALPH TERRY, Acting Warden

Respondent - Appellee

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge Wynn, and Judge Thacker.

For the Court

/s/ Nwamaka Anowi, Clerk

Appendix C