

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LAMONTE A. EALY,

Petitioner,

v.

Case No. 22-cv-0736-bhl

DYLON RADTKE, Warden,

Respondent.

**ORDER DENYING MOTION FOR LEAVE TO APPEAL WITHOUT
PREPAYMENT OF THE FILING FEE**

On August 29, 2022, the Court entered an Order and Judgment dismissing habeas petitioner Lamonte A. Ealy's petition for writ of habeas corpus under 28 U.S.C. Section 2254, concluding that his claims were procedurally defaulted. (ECF Nos. 8 & 9.) On October 20, 2022, the Court also declined to issue a certificate of appealability. (ECF No. 24.) Ealy appealed and, on April 17, 2023, the Seventh Circuit entered an Order finding that Ealy had not made a substantial showing of the denial of a constitutional right and denied his request for a certificate of appealability. (ECF No. 25 at 1 citing 28 U.S.C. §2253(c)(2)). The Court of Appeals also denied Ealy's request for leave to proceed *in forma pauperis* and other pending motions. (*Id.*)

On December 23, 2025, two and one-half years after Ealy's appeal of the dismissal of his habeas petition had been dismissed, Ealy returned to this Court with a motion to appoint counsel. (ECF No. 27.) On January 26, 2026, the Court denied Ealy's motion. (ECF No. 28.) Ealy then filed a motion for reconsideration, (ECF No. 29), which the Court construed as a motion for relief from a judgment or order pursuant to Federal Rule of Civil Procedure 60 and denied. (ECF No. 30 at 2.) Ealy then filed a motion to alter or amend the judgment but cited Rule 60(b)(6) and claimed "ex[tra]ordinary circumstances." (ECF No. 31.) The Court denied that motion, too. (ECF No. 37.)

On February 17, 2026, Ealy filed a notice of appeal, (ECF No. 32), and on February 27, 2026, a motion for extension of time to submit trust account statement, (ECF No. 38), and motion for leave to appeal without prepayment of the filing fee, (ECF No. 39). A petitioner is not allowed

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to appeal *in forma pauperis* if the district court “certifies in writing that [the appeal] is not taken in good faith.” 28 U.S.C. § 1915(a)(3). “[T]o determine that an appeal is in good faith, a court need only find that a reasonable person could suppose that the appeal has some merit.” *Walker v. O’Brien*, 216 F.3d 626, 632 (7th Cir. 2000). Ealy does not meet that modest standard.

As the Court explained in its Order denying Ealy’s motion for appointment of counsel, his request was denied for a number of reasons. As an initial matter, Ealy’s motion comes far too late. His case is long closed, and his appeal was already dismissed more than two years ago. Moreover, his motion indicates he simply wishes to rehash arguments that this Court has already rejected. Ealy’s motion for leave to appeal without prepayment of the filing fee does not identify any reason to suppose this ruling or any of the Court’s subsequent rulings might be reversed on appeal. *See Thomas v. Zatecky*, 712 F.3d 1004, 1006 (7th Cir. 2013). In the absence of any such argument, the Court must conclude that his appeal is frivolous and therefore “not taken in good faith.” The Court, therefore, denies Ealy’s motions.

Accordingly,

IT IS HEREBY ORDERED that Ealy’s motion for leave to appeal without prepayment of the filing fee, ECF No. 39, is **DENIED**.

IT IS FURTHER ORDERED that Ealy’s motion for extension of time to submit trust account statement, ECF No. 38, is **DENIED** as moot.

Dated at Milwaukee, Wisconsin on March 10, 2026.

s/ Brett H. Ludwig

BRETT H. LUDWIG

United States District Judge

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 15, 2026

Decided May 18, 2026

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 26-1326

LAMONTE EALY,
Petitioner-Appellant,

v.

PAULA STOUTT,
Respondent-Appellee.

Appeal from the United States District
Court for the Eastern District of
Wisconsin.

No. 22-cv-0736-bhl

Brett H. Ludwig,
Judge.

ORDER

Lamonte Ealy has filed a notice of appeal from the denial of his motion for reconsideration concerning 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). Nor do we find new proof of innocence or a claim based on a new and retroactive rule of constitutional law. *See* 28 U.S.C. § 2255(h); *Gonzalez v. Crosby*, 545 U.S. 524, 530–31 (2005) (treating a motion under FED. R. CIV. P. 60(b) as a successive habeas petition).

Accordingly, the request for a certificate of appealability is DENIED. Ealy's pending motions are also DENIED.

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UNITED STATES DISTRICT COURT
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Respondent.

ORDER

On August 29, 2022, the Court entered an Order and Judgment dismissing habeas petitioner Lamonte A. Ealy's petition for writ of habeas corpus under 28 U.S.C. Section 2254, concluding that his claims were procedurally defaulted. (ECF Nos. 8 & 9.) On October 20, 2022, the Court also declined to issue a certificate of appealability. (ECF No. 24.) Ealy appealed and, on April 17, 2023, the Seventh Circuit entered an Order finding that Ealy had not made a substantial showing of the denial of a constitutional right and denied his request for a certificate of appealability. (ECF No. 25 at 1 citing 28 U.S.C. §2253(c)(2)). The Court of Appeals also denied Ealy's request for leave to proceed *in forma pauperis* and other pending motions. (*Id.*)

Two and one-half years later, Ealy has filed a motion to appoint counsel. (ECF No. 27.) His request is denied for a number of reasons. As an initial matter, Ealy's motion comes far too late. His case is long closed, and his appeal was already dismissed more than two years ago. Moreover, his motion indicates he simply wishes to rehash arguments that this Court has already rejected.

Accordingly,

IT IS HEREBY ORDERED that Ealy's motion for the appointment of counsel, ECF No. 27, is **DENIED**.

Dated at Milwaukee, Wisconsin on January 26, 2026.

s/ Brett H. Ludwig

BRETT H. LUDWIG

United States District Judge

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LAMONTE EALY,

Petitioner,

v.

Case No. 22-cv-0736-bhl

DYLON RADTKE,

Respondent.

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION

On August 5, 2022, this Court screened Petitioner Lamonte A. Ealy's petition for writ of habeas corpus under 28 U.S.C. Section 2254 and concluded that the claims raised had been previously rejected in the state courts on an adequate and independent state law ground. (ECF No. 6.) Because such procedural default generally bars federal habeas review, the Court offered Ealy a chance to establish cause and prejudice or show a miscarriage of justice, sufficient to avoid his default. (*Id.* at 3.) Ealy filed a response, but nothing in his brief sufficed to excuse his procedural default, and, accordingly, the Court dismissed his petition and entered judgment on August 29, 2022. (ECF Nos. 8 & 9.) Ealy appealed and, on April 17, 2023, the Seventh Circuit entered an Order finding that Ealy had not made a substantial showing of the denial of a constitutional right and denied his request for a certificate of appealability. (ECF No. 25 at 1 citing 28 U.S.C. §2253(c)(2).) The Court of Appeals also denied Ealy's request for leave to proceed *in forma pauperis* and other pending motions. (*Id.*)

On December 23, 2025, two and one-half years after his appeal had been dismissed, Ealy returned to this Court with a motion to appoint counsel. (ECF No. 27.) The Court denied his request for number of reasons including that the case was long closed and his motion simply rehashed arguments that the Court rejected. (ECF No. 28.) Ealy has now filed a "motion for reconsideration for counsel." (ECF No. 29.)

The Federal Rules of Civil Procedure do not authorize motions to reconsider. The Seventh Circuit has held, however, that a motion challenging the merits of a district court decision should

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be considered as having been filed pursuant to Rule 59(e) or Rule 60(b) of the Federal Rules of Civil Procedure. *See, e.g., Mares v. Busby*, 34 F.3d 533, 535 (7th Cir. 1994). A Rule 59(e) motion must be filed no later than 28 days after the entry of judgment and “essentially enables a district court to correct its own errors, sparing the parties and the appellate courts the burden of unnecessary appellate proceedings.” *Russell v. Delco Remy Div. of Gen. Motors Corp.*, 51 F.3d 746, 749 (7th Cir. 1995). By contrast, Rule 60(b) is an extraordinary remedy “designed to address mistakes attributable to special circumstances and not merely to erroneous applications of law.”

Eskridge v. Cook Cnty., 577 F.3d 806, 809 (7th Cir. 2009) (citation omitted). Rule 60(b) allows a party to seek relief from an “order” for any of six enumerated reasons, including mistake, inadvertence, newly discovered evidence, fraud, or any other reason that justifies relief. Fed. R. Civ. P. 60(b). Relief under Rule 60(b) is “granted only in exceptional circumstances.” *Eskridge*, 577 F.3d at 809 (quoting *McCormick v. City of Chicago*, 230 F.3d 319, 327 (7th Cir. 2000)).

The Court entered judgment in this case on August 29, 2022. (ECF No. 9.) Because more than three years have passed, Ealy cannot seek relief under Rule 59(e). Rule 60(b) offers more flexibility in terms of filing; a motion invoking this rule must be filed “within a reasonable time” after an order and depending on the basis for the motion, up to a year after entry of the order being challenged. *See* Fed. R. Civ. P. 60(c)(1). Given the timing of his request, the Court will treat Ealy’s filing as a Rule 60(b) motion. Even so construed, Ealy’s motion must be denied.

Ealy has not demonstrated that he is entitled to relief under any of the provisions in Rule 60(b). He has not shown that the Court made a mistake or identified any newly discovered evidence. His case concluded over two years ago and he presents no meritorious reason for the Court to reopen it. Moreover, there is no statutory or constitutional right to court-appointed counsel in federal civil litigation, including Section 2254 cases, and Ealy has made no showing that he has even attempted to obtain counsel on his own. *See Giles v. Godinez*, 914 F.3d 1040, 1052–53 (7th Cir. 2019). The Court will therefore deny the motion for reconsideration.

Accordingly, **IT IS HEREBY ORDERED** that Ealy’s Motion for Reconsideration, ECF No. 29, is **DENIED**.

Dated at Milwaukee, Wisconsin on February 9, 2026.

s/ Brett H. Ludwig
BRETT H. LUDWIG
United States District Judge