

ordered that Petitioner file an amended petition setting forth the specific grounds upon which he seeks relief and the facts supporting his claims (Id.). Petitioner objected to the Order (Id.). The Court, however, denied Petitioner's objections and affirmed the order (Id.). On April 13, 2011, Petitioner filed a motion for relief from that order (Id.). On June 23, 2011, the Court issued an order denying Petitioner's motion. Petitioner now seeks relief from the June 23, 2011 order pursuant to Fed. R. Civ. P. 60.

In the current motion, Petitioner reiterates his previous arguments that he is not seeking habeas relief; that, to the extent the Court treats his case as a habeas case, the Court is without jurisdiction to hear the case; that he is seeking a rule nisi ordering Respondent to show cause why Petitioner is being held in a state correctional facility; that the change in the title of this action from "Robin Knab, Warden, Respondent" to "Warden, Chillicothe Correctional Institution, Respondent" was a material alteration that took "all substantial rights from the petitioner" and changed the meaning of the action; that he is not challenging his sentence and incarceration but, instead, the legal justification for it. He rejects the Court's determination that habeas relief is the only applicable avenue of relief for him, contending that section 2254 "would control only if [Petitioner] is incarcerated pursuant to due process of law and the judgment of an

official state court," implying that his incarceration was not done pursuant to due process or the judgment of an official state court. Petitioner further asserts that the Court's observation that Petitioner was incarcerated after his conviction by jury of felonious assault and is currently housed at the Chillicothe Correctional Institution was akin to the Court "rul[ing] on a hypothetical question of whether petitioner is a prisoner or not," something which entitles Petitioner to "relief" under Federal Rule of Civil Procedure 60(b)(6).

The Court declines Petitioner's invitation to engage in a rehashing of Petitioner's previous arguments. He has raised nothing new in this current motion that would permit, let alone compel, this Court to grant Petitioner relief from the Court's order of June 23, 2011 dismissing this case. He has presented no authority that supports his contention that he is entitled to a rule nisi or relief from a final judgment pursuant to Rule 60(b). Petitioner has repeatedly complained about the change in title of this case from "Robin Knab, Warden, Respondent" to "Warden, Chillicothe Correctional Institution, Respondent" but has repeatedly failed to present any authority whatsoever that such a change constitutes a clerical mistake as contemplated by Rule 60(a) or that his substantive rights were in any way affected by such a change. Further, he refuses to acknowledge the discretionary nature of Rule 60(a), which simply permits a court to correct

clerical mistakes under certain circumstances but in no way requires a court to do so in response to a baseless motion.

Petitioner's contentions regarding the Court's jurisdiction are equally unsupported and are simply wrong. As the Court has previously noted, the Magistrate Judge was fully empowered to order that Petitioner clarify his petition and was fully empowered to issue the various reports and recommendations in this case. Petitioner has offered no authority to the contrary, and there is none to be found.

Similarly, Petitioner's assertion that he is not challenging his conviction but, instead, the legal justification for it is an assertion that leads nowhere because it is a distinction without a difference. If a state prisoner wants a federal court to review his state conviction, including the "legal justification" for it, he must file a writ of habeas corpus alleging that he is in custody in violation of either the federal Constitution or the laws or treaties of the United States. See 28 U.S.C. § 2254. That is the statutory framework all state prisoners are subject to, including Petitioner. Petitioner's bald assertion that he is not in custody pursuant to a judgment of a state court is both factually inaccurate and legally insufficient to entitle him to the relief he seeks. He may disagree with his conviction or he may believe that it was obtained in error, but that does not change the fact that he is currently incarcerated because he was

convicted of felonious assault and is currently housed at the Chillicothe Correctional Institution. Petitioner contends that the Court's observation that he is so incarcerated somehow equates to a Court ruling on a hypothetical situation. That observation is not a ruling, and it is not hypothetical; it is a fact. That fact does not prevent Petitioner from questioning the legal justification for his detention, as he purports to be doing, but, as the Court has repeatedly instructed, the sole basis for pursuing that question in federal court is a habeas petition made pursuant to 28 U.S.C. § 2254. Because section 2254 provides a statutory avenue of potential relief for Petitioner, he is not entitled to a rule nisi, as this Court thoroughly explained in its previous order. Once again, Petitioner offers no authority to the contrary, and none is to be found.

The Court dismissed this case with prejudice on June 23, 2011. Petitioner has offered nothing to compel the Court to amend or alter that decision in any way. Petitioner has failed to prosecute his case according to the dictates of 28 U.S.C. § 2254, and the Court therefore reiterates that this case is DISMISSED WITH PREJUDICE from the Court's docket for want of prosecution. Petitioner's Motion for Relief from the Order of the Court (doc. 23) is DENIED.

The Court notes that Petitioner filed a motion for a rule nisi on July 28, 2011, which motion was filed after the Court

dismissed this case on June 23, 2011, and, in any event, does not present any new arguments or authority. That motion is DENIED. Further, pursuant to the Court's authority under 28 U.S.C. § 1651(a), the Court hereby DIRECTS the Clerk of Court (1) to refuse for filing any further documents by Petitioner except for a notice of appeal from this Opinion and (2) to return to Petitioner, without filing, any such documents presented. Unless directed to the contrary by the Court of Appeals, this Court will entertain no further filings by Petitioner in this matter.

Finally, the Court DECLINES to issue a certificate of appealability because Petitioner has failed to make a substantial showing of the denial of a constitutional right, and the issues presented are not adequate to deserve encouragement to proceed further. See Slack v. McDaniel, 529 U.S. 473, 484-85 (2000); 28 U.S.C. § 2253(c), Fed. R. App. P. 22(b). Finally, pursuant to 28 U.S.C. §1915(a)(3), this Court CERTIFIES that any appeal of this order will not be taken in good faith, and any application to appeal in forma pauperis will be DENIED.

SO ORDERED.

DATED: August 23, 2011 /s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge