IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

DONNELL M. DYER-EL,

Petitioner,

v. Civil Action No. **3:19CV365**

MARK J. BOLSTER,

Respondent.

MEMORANDUM OPINION

Donnell M. Dyer-El, a District of Columbia Code Offender incarcerated in the Federal Correctional Complex in Petersburg, Virginia, proceeding *pro se*, submitted a 28 U.S.C. § 2241 Petition. (ECF No. 6.) The matter is before the Court on Dyer-El's Motion for Reconsideration of the June 29, 2020 decision that dismissed his action. For the reasons set forth below, the Motion for Reconsideration (ECF No. 23) will be DENIED.

I. Procedural History

In his § 2241 Petition, Dyer-El challenged his 1998 convictions in the Superior Court for the District of Columbia for first-degree murder while armed, possession of a firearm during the commission of a crime of violence, carrying a pistol without a license ("CPWL"), and obstruction of justice. By Memorandum Opinion and Order entered on June 29, 2020, the Court dismissed the action and Dyer-El's claims for want of jurisdiction because they could not be pursued in a 28 U.S.C. § 2241 petition. *Dyer-El v. Bolster*, No. 3:19CV365, 2020 WL 3513695, at *3 (E.D. Va. June 29, 2020). The Court further noted that under the somewhat convoluted law that governs District of Columbia Code Offenders, Dyer-El could pursue his claim of ineffective assistance of appellate counsel in this Court in a 28 U.S.C. § 2254 petition. *Id.* The Clerk mailed the appropriate form to Dyer-El to the extent that he wanted to pursue that claim in this Court.

Thirty days later, on July 29, 2020, Dyer-El executed and presumably mailed his Motion for Reconsideration to this Court.[1] Accordingly, the Court will consider the motion as one seeking relief under Federal Rule of Civil Procedure 60(b). *See MLCAuto., LLC v. Town of S. Pines*, 532 F.3d 269, 277–78 (4th Cir. 2008) (stating that filings made within twenty-eight days after the entry of judgment are construed as Rule 59(e) motions (citing *Dove v. CODESCO*, 569 F.2d 807, 809 (4th Cir. 1978))); *In re Burnley*, 988 F.2d 1, 2–3 (4th Cir. 1992) (concluding post-judgment motion filed outside the period for filing a Rule 59(e) should be considered a Rule 60(b) Motion).

III. Analysis

"[R]econsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (citation omitted) (internal quotation marks omitted). A party seeking relief under Federal Rule of Civil Procedure 60(b) must make a threshold showing of "timeliness, a meritorious defense, a lack of unfair prejudice to the opposing party, and exceptional circumstances." *Dowell v. State Farm Fire & Cas. Auto. Ins. Co.*, 993 F.2d 46, 48 (4th Cir. 1993) (quoting *Werner v. Carbo*, 731 F.2d 204, 207 (4th Cir. 1984)). After a party satisfies this threshold showing, "he [or she] then must satisfy one of the six specific sections of Rule 60(b)." *Id.* (citing *Werner*, 731 F.2d at 207). Furthermore, a litigant cannot use Rule 60(b) simply to request "reconsideration of legal issues already addressed in an earlier ruling." *CNF Constructors, Inc. v. Donohoe Constr. Co.*, 57 F.3d 395, 401 (4th Cir. 1995) (citing *United States v. Williams*, 674 F.2d 310, 313 (4th Cir. 1982)).

Dyer-El fails to demonstrate that he is entitled to relief under Rule 60(b). Although Dyer-El contends that the Court's dismissal of the action was wrong, he fails to explain as a matter of fact and law why that is so. Instead, the majority of Dyer-El's Motion for Reconsideration is

[1] The Court deems the Motion for Reconsideration filed as of that date. *See Houston v. Lack*, 487 U.S. 266, 276 (1988).

devoted to insisting that the Court should appoint counsel to assist in filing any further habeas petition. It is well established that "the initial burden of presenting a claim [for] post-conviction relief usually rests upon the indigent prisoner himself with such help as he can obtain within the prison walls or the prison system." *Johnson v. Avery*, 393 U.S. 483, 488 (1969). "In most federal courts, it is the practice to appoint counsel in post-conviction proceedings *only after* a petition for post-conviction relief passes initial judicial evaluation *and* the court has determined that issues are presented calling for an evidentiary hearing" or that the matter cannot be adequately litigated without the assistance of counsel. *Id.* at 487 (emphases added) (citing *Taylor v. Pegelow*, 335 F.2d 147 (4th Cir. 1964), and *United States ex rel. Marshall v. Wilkins*, 338 F.2d 404 (2d Cir. 1964)). If Dyer-El files a § 2254 petition and the interests of justice warrant the appointment of counsel, the Court will appoint counsel to represent Dyer-El. The Motion for Reconsideration (ECF No. 23) will be DENIED.

An appropriate Order shall accompany this Memorandum Opinion.

/s/
John A. Gibney, Jr.
United States District Judge

Date: 30 October 2020
Richmond, Virginia