

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

WALTER E. JOHNSON, JR. (#104558)

CIVIL ACTION

VERSUS

BURL CAIN, ET AL.

NO.: 3:98-cv-00806-BAJ-SCR

RULING AND ORDER

Before the Court is Petitioner's **MOTION UNDER RULE 60(b)(6) TO REOPEN CLOSED CASE FILE FOR DEFECT IN THE PROCEEDINGS (Doc. 41)** and related **MOTION FOR LEAVE OF COURT UNDER RULE 6(a) DISCOVERY (Doc. 42)**. Petitioner's motions are aimed to "challenge[] the Federal Court's determination that his habeas petition was time barred under AEDPA." (Doc. 41 at p. 6).

"Rule 60(b)(6) provides that a court may relieve a party from a final judgment for any . . . reason justifying relief from the operation of the judgment." *Batts v. Tow-Motor Forklift Co.*, 66 F.3d 743, 747 (5th Cir. 1995) (quotation marks and alterations omitted). However, "a movant seeking relief under Rule 60(b)(6) [must] show 'extraordinary circumstances' justifying the reopening of a final judgment." *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005). "Such circumstances will rarely occur in the habeas context." *Id.*

Petitioner seeks to challenge the Court's original determination that his habeas petition was untimely. (Doc. 41 at p. 6; *see* Doc. 12 at p. 6 (Magistrate

Judge's Report recommending that Petitioner's habeas petition be dismissed as untimely); Doc. 14 (Order adopting Magistrate Judge's Report)). Petitioner has had ample opportunity to raise such arguments and, indeed, has already done so on multiple occasions. (See, e.g., Doc. 13 (Petitioner's objection to the Magistrate Judge's Report); Doc. 16 (Petitioner's request for a certificate of appealability)). Thus, Petitioner has failed to show extraordinary circumstances to justify reopening his case. Cf. *Williams v. Thaler*, 602 F.3d 291, 312 (5th Cir. 2010) (recognizing that "the inability to timely file a habeas petition" is *not* an "extraordinary circumstance" justifying relief under Rule 60(b)(6)). Accordingly,

IT IS ORDERED that Petitioner's **MOTION UNDER RULE 60(b)(6) TO REOPEN CLOSED CASE FILE FOR DEFECT IN THE PROCEEDINGS (Doc. 41)** is **DENIED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED** because Petitioner has failed to make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253; Fed. R. App. P. 22(b).

IT IS FURTHER ORDERED that Petitioner's **MOTION FOR LEAVE OF COURT UNDER RULE 6(a) DISCOVERY** is **DENIED AS MOOT**.

Baton Rouge, Louisiana, this 2nd day of September 2014.



**BRIAN A. JACKSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**