

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD BANKS,

Petitioner,

Case Number: 07-12821

v.

HONORABLE AVERN COHN

NICK J. LUDWICK,

Respondent.

ORDER DENYING PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT
(Doc. 38)
AND DENYING A CERTIFICATE OF APPEALABILITY

I. Introduction

This is a habeas case under 28 U.S.C. § 2254 which has been closed. In 2007, Petitioner filed a habeas petition challenging his 1981 armed robbery and firearms convictions, claiming he was denied his right to speedy trial under both the Sixth Amendment and the Interstate Agreement on Detainers, and that his sentence was improper. In 2008, the Court dismissed the petition as untimely.

Before the Court is Petitioner's motion for relief from judgement under Fed. R. Civ. P. 60(b). As will be explained, this is Petitioner's fourth motion filed under Rule 60(b). Like the previous three motions, this motion will also be denied. A certificate of appealability will also be denied.

II. Background

Upon the filing of the petition, the case was referred to a magistrate judge for all proceedings. Respondent filed a motion to dismiss on the grounds that the petition is barred by the one year statute of limitations. Petitioner filed a motion for summary judgment. The magistrate judge issued a report and recommendation (MJRR),

recommending that Respondent's motion be granted because the petition was not timely filed and that Petitioner's motion be denied as moot. Petitioner objected. The Court adopted the MJRR, granted Respondent's motion and dismissed the case. See Order filed June 11, 2008, Doc. 17. The Court denied a certificate of appealability (COA). See Order filed July 7, 2008, Doc. 23. The Court of Appeals for the Sixth Circuit also denied a COA. See Doc. 24.

On January 7, 2011, Petitioner filed his first motion for relief from judgment under Rule 60(b) in which he argued that the Court improperly dismissed the petition as untimely. Doc. 25. The Court denied the motion for lack of merit. See Order filed January 24, 2011, Doc. 26. Petitioner filed a notice of appeal. Doc. 27.

On February 22, 2011, Petitioner filed a second motion for relief from judgment. Doc. 29. The motion appeared to be the same motion filed in January except that the motion contained attachments, including a copy of the Court's order denying the original motion. The Court denied the motion. See Order filed March 2, 2011. Doc. 31. On July 1, 2011, the Court denied a certificate of appealability. See Doc. 32.

On August 3, 2011, Petitioner filed his third 60(b) motion, again presenting the same arguments raised in his prior two Rule 60(b) motions. Doc. 34. On August 9, 2011, the Court denied the motion and a certificate of appealability. Doc. 35.

Meanwhile, on August 31, 2011, the Sixth Circuit denied Petitioner a certificate of appealability as to his first motion for relief from judgment (Doc. 25), finding that Petitioner failed to show that reasonable jurists would debate whether the petition was timely filed. Doc. 37.

Undeterred, on November 4, 2011, Petitioner filed what is his fourth motion under Rule 60(b), again contending that the Court erred when it dismissed his habeas petition as

untimely. Doc. 38. Petitioner's motion is DENIED for the reasons in the Court's orders of January 24, 2011, March 2, 2011, and August 9, 2011, as well as for the reasons explained by the Sixth Circuit in its August 31, 2011 order.

Before Petitioner can appeal the Court's decision, a certificate of appealability (COA) must issue. See United States v. Hardin, 481 F.3d 924, 926 (6th Cir. 2007) (stating that "this prerequisite [a COA] is consistent with the language of section 2253, and therefore hold that [a Petitioner] must obtain a certificate of appealability before his appeal of the denial of his Rule 60(b)). Reasonable jurist would not debate whether Petitioner's 60(b) motion deserves to proceed further. Accordingly, a COA is DENIED. See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000).

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: November 22, 2011

I hereby certify that a copy of the foregoing document was mailed to Ronald Banks, 225311, Pugsley Correctional Facility, 7401 East Walton Road, Kingsley, MI 49649 and the attorneys of record on this date, November 22, 2011, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160