

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

RODERICK ANDRE McGUIRE,

Petitioner,

v.

CASE NO. 2:07-CV-15399  
HONORABLE VICTORIA A. ROBERTS  
UNITED STATES DISTRICT JUDGE

NICK LUDWICK,

Respondent.

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**OPINION AND ORDER DENYING THE MOTION FOR RECONSIDERATION**

On August 11, 2009, this Court denied Petitioner's habeas application brought pursuant to 28 U.S.C. § 2254, but granted Petitioner a certificate of appealability with respect to one of his claims and leave to appeal *in forma pauperis*. *McGuire v. Ludwick*, No. 2:07-CV-15399, 2009 WL 2476452 (E.D. Mich. August 11, 2009).

On February 11, 2014, this Court denied Petitioner's motions to extend the time to file a notice of appeal. *McGuire v. Ludwick*, No. 2:07-CV-15399, 2014 WL 539787 (E.D. Mich. February 11, 2014).

Petitioner filed a motion for reconsideration. For the reasons that follow, the motion for reconsideration is DENIED.

U.S. Dist.Ct. Rules, E.D. Mich. 7.1 (h) allows a party to file a motion for reconsideration. However, a motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be

granted. *Michigan Regional Council of Carpenters v. Holcroft L.L.C.* 195 F. Supp. 2d 908, 911 (E.D. Mich. 2002)(citing to U.S. Dist.Ct. Rules, E.D. Mich. 7.1 (g)(3)). A motion for reconsideration should be granted if the movant demonstrates a palpable defect by which the court and the parties have been misled and that a different disposition of the case must result from a correction thereof. *Id.* A palpable defect is a defect that is obvious, clear, unmistakable, manifest, or plain. *Witzke v. Hiller*, 972 F. Supp. 426, 427 (E.D. Mich. 1997).

Petitioner argues in his motion for reconsideration that the Court should grant his motion for an extension of time to file an appeal, because he did not receive timely notice of the Court's decision from August 11, 2009 denying habeas relief.

The Court denied Petitioner's motions for an extension of time to file an appeal because they were untimely. A party asserting that he or she failed to receive prompt notice of an order that he or she wishes to appeal may seek relief for filing an appeal under either Federal Rule of Appellate Procedure 4(a)(5) or 4(a)(6). *Zak v. United States*, 133 F. 3d 451, 453 (6<sup>th</sup> Cir. 1998). Petitioner's first motion to reopen the case was dated December 26, 2013. Because Petitioner's motion was filed more than 30 days after the expiration of the time to file an appeal, Petitioner was unable to obtain an extension of the time to file an appeal pursuant to Fed. R. App. P. 4 (a)(5). Petitioner was also unable to use the provisions of Fed.R.App. P. 4(a)(6) to extend the time to file a notice of appeal, because his requests to extend the time to file an appeal were filed more than 180 days after this Court entered the order denying habeas relief. Because Petitioner filed his

motions more than 180 days after the denial of his habeas corpus petition, the Court lacked the authority to extend the time for filing an appeal. *See Hall v. Scutt*, 482 Fed. Appx. 990, 991 (6<sup>th</sup> Cir. 2012).

Petitioner failed to show that this Court's ruling was erroneous. *Benton v. Booker*, 403 Fed. Appx. 984, 985 (6<sup>th</sup> Cir. 2010), the case cited to by Petitioner, is inapplicable because it did not involve a habeas petitioner seeking to extend the time to file an appeal under Fed. R. App. P. 4 (a)(5) or (6) but dealt with a habeas petitioner who had been unable to file objections to a magistrate judge's report and recommendation because it had been mailed to the wrong prison.

Petitioner failed to show that this Court erred in denying his motions to extend the time to file an appeal. The motion for reconsideration will be denied, because Petitioner merely presented issues which were already ruled upon by this Court, either expressly or by reasonable implication, when the Court denied the motions to extend time to file an appeal. *Hence v. Smith*, 49 F. Supp. 2d 549, 553 (E.D. Mich. 1999).

## **ORDER**

Based upon the foregoing, IT IS ORDERED that the motion for reconsideration [dkt. # 18] is **DENIED**.

**S/VICTORIA A. ROBERTS**  
UNITED STATES DISTRICT COURT

DATED: 3/11/2014

The undersigned certifies that a copy of this document was served on the attorneys of record and Roderick Andre McGuire by electronic means or U.S. Mail on March 11, 2014.

S/Carol A. Pinegar \_\_\_\_\_  
Deputy Clerk