

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PHILLIP BROWN,

Petitioner,

Case Number 09-CV-14850

Honorable Patrick J. Duggan

JEFFREY WOODS,

Respondent.

**ORDER DENYING PETITIONER'S MOTION TO VACATE OPINION
AND ORDER DENYING PETITIONER'S MOTION FOR
RECONSIDERATION**

This matter is presently before the Court on Petitioner's motion asking the Court to vacate its order, entered on March 20, 2015, denying Petitioner's motion for reconsideration of the Court's order denying Petitioner's request for habeas relief. Petitioner contends that the Court lacked jurisdiction to decide his motion for reconsideration because Petitioner had already filed a notice of appeal. However, Petitioner filed his notice of appeal *after* he filed his motion for reconsideration. Therefore, while the Court did not rule on the motion until after Petitioner filed a notice of appeal, and while the filing of a notice of appeal generally "transfers jurisdiction over the merits of the appeal to the appellate court," *Workman v. Tate*, 958 F.2d 164, 167 (6th Cir. 1992), the Court believes that it had jurisdiction to decide the motion where its filing predated the filing of the notice of appeal.

Even if the Court lacked jurisdiction to decide the motion, the Court can discern no harm resulting from its ruling on the motion. Other courts in this District have considered the merits of a habeas petitioner's motion for reconsideration despite the filing of a notice of appeal. *See, e.g., Gardner v. Maclaren*, No. 13-CV-15051, 2014 WL 6631249, at *1 (E.D. Mich. Nov. 21, 2014); *Quatrine v. Berghuis*, No. 10-CV-11603, 2014 WL 1686193, at *1 (E.D. Mich. Apr. 29, 2014). Accordingly, Petitioner's motion to vacate the Court's March 20, 2015 order denying reconsideration is **DENIED**.

s/Patrick J. Duggan
United States District Judge

Dated: September 9, 2015

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