NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TORMU E. PRALL, Petitioner, v. BURLINGTON CITY MUNICIPAL COURT, Respondent.	Civil No.: 09-2615 (NLH) **O P I N I O N**

APPEARANCES:

TORMU E. PRALL, Petitioner Pro Se
#531669
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P.O. Box 8068
Trenton, New Jersey 08650

HILLMAN, District Judge

This matter comes before the Court upon the motion of pro se petitioner, Tormu E. Prall ("Prall") for vacatur and recusal, with respect to this Court's Opinion and Order entered on July 29, 2009, dismissing Prall's petition for a writ of habeas corpus under 28 U.S.C. § 2241. (Docket entry no. 2 and 3). Prall submitted his application for vacatur and recusal on or about September 15, 2009. (Docket Entry No. 4).

This motion is decided without oral argument pursuant to Federal Rule of Civil Procedure 78. For the reasons stated below, the motion will be denied.

I. BACKGROUND

In his habeas petition, filed on or about May 28, 2009, Prall challenged his detention, asking this Court to direct the Burlington City Municipal Court to hold a hearing on his "claims" or release Prall from custody. In an Opinion and Order entered on July 29, 2009, this Court dismissed Prall's habeas petition finding that Prall was not being held pursuant to the detainer as alleged. Instead, this Court found that Prall's state court detention was related to the other crimes from which he fled prosecution and is now awaiting trial. Further, any challenge to Prall's present detention must be made to the state court conducting the criminal proceedings for which he is being held. Because Prall did not allege that he had exhausted his state remedies, nor did he describe any effort he had made to test the lawfulness of his pre-trial detention in the New Jersey state courts since his extradition, and because Prall failed to allege any "extraordinary circumstances" justifying intervention by a federal court, this Court dismissed the habeas petition pursuant to Moore v. DeYoung, 515 F.2d 437 (3d Cir. 1975).

Thereafter, Prall filed this motion for vacatur and recusal on September 15, 2009, claiming that this Court "disregarded the

rule of law," "desire[d] for revenge or to see petitioner punished," "appears to be an accomplice in the willful disobedience of [the] Constitution," was biased and "transformed into a witness for the Federal Marshal, Trenton Police Department, and Mercer County Prosecutor Office," is "incompetent to render Judgement evenly and dispassionately," and "unconstitutionally discriminated against petitioner." (Docket entry no. 4). Prall provides no basis for these vituperative and conclusory statements.

II. ANALYSIS

A. Motion for Vacatur

This Court will construe Prall's motion for vacatur as a motion for reconsideration of the Court's Opinion and Order dismissing the petition. Motions for reconsideration are not expressly recognized in the Federal Rules of Civil Procedure. United States v. Compaction Sys. Corp., 88 F. Supp.2d 339, 345 (D.N.J. 1999). Generally, a motion for reconsideration is treated as a motion to alter or amend judgment under Fed.R.Civ.P. 59(e), or as a motion for relief from judgment or order under Fed.R.Civ.P. 60(b). Id. In the District of New Jersey, Local Civil Rule 7.1(i) governs motions for reconsideration. Bowers v. Nat'l. Collegiate Athletics Ass'n., 130 F. Supp.2d 610, 612 (D.N.J. 2001).

Local Civil Rule 7.1(i) permits a party to seek reconsideration by the Court of matters "which [it] believes the Court has overlooked" when it ruled on the motion. L. Civ. R. 7.1(i); see NL Industries, Inc. v. Commercial Union Insurance, 935 F. Supp. 513, 515 (D.N.J. 1996). The standard for reargument is high and reconsideration is to be granted only sparingly. See United States v. Jones, 158 F.R.D. 309, 314 (D.N.J. 1994). The movant has the burden of demonstrating either: "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [issued its order]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." Max's Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999)(*citing* N. River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995)). The Court will grant a motion for reconsideration only where its prior decision has overlooked a factual or legal issue that may alter the disposition of the matter. Compaction Sys. Corp., 88 F. Supp.2d at 345; see also L.Civ.R. 7.1(I). "The word 'overlooked' is the operative term in the Rule." Bowers, 130 F. Supp.2d at 612 (citation omitted); see also Compaction Sys. Corp., 88 F. Supp.2d at 345.

Ordinarily, a motion for reconsideration may address only those matters of fact or issues of law which were presented to, but not considered by, the court in the course of making the

decision at issue. See SPIRG v. Monsanto Co., 727 F. Supp. 876, 878 (D.N.J.), aff'd, 891 F.2d 283 (3d Cir. 1989). Thus, reconsideration is not to be used as a means of expanding the record to include matters not originally before the court. Bowers, 130 F. Supp.2d at 613; Resorts Int'l. v. Greate Bay Hotel and Casino, Inc., 830 F. Supp. 826, 831 & n.3 (D.N.J. 1992); Egloff v. New Jersey Air National Guard, 684 F. Supp. 1275, 1279 (D.N.J. 1988). Absent unusual circumstances, a court should reject new evidence which was not presented when the court made the contested decision. See Resorts Int'l, 830 F. Supp. at 831 n.3. A party seeking to introduce new evidence on reconsideration bears the burden of first demonstrating that evidence was unavailable or unknown at the time of the original hearing. See Levinson v. Regal Ware, Inc., Civ. No. 89-1298, 1989 WL 205724 at *3 (D.N.J. Dec. 1, 1989).

Moreover, L.Civ.R. 7.1(i) does not allow parties to restate arguments which the court has already considered. See G-69 v. Degnan, 748 F. Supp. 274, 275 (D.N.J. 1990). Thus, a difference of opinion with the court's decision should be dealt with through the normal appellate process. Bowers, 130 F. Supp.2d at 612 (citations omitted); Florham Park Chevron, Inc. v. Chevron U.S.A., Inc., 680 F. Supp. 159, 162 (D.N.J. 1988); see also Chicosky v. Presbyterian Medical Ctr., 979 F. Supp. 316, 318 (D.N.J. 1997); NL Industries, Inc. v. Commercial Union Ins. Co.,

935 F. Supp. 513, 516 (D.N.J. 1996) ("Reconsideration motions ... may not be used to re-litigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment."). In other words, "[a] motion for reconsideration should not provide the parties with an opportunity for a second bite at the apple." Tishcio v. Bontex, Inc., 16 F. Supp.2d 511, 533 (D.N.J. 1998)(citation omitted).

Here, Prall fails to provide any evidence to show that this Court "overlooked" a factual or legal issue that may alter the disposition of the matter, which is necessary for the Court to entertain the motion for reconsideration. Rather, it is evident that Prall simply disagrees with this Court's ruling.

Consequently, Prall fails to satisfy the threshold for granting a motion for reconsideration. He has not presented the Court with changes in controlling law, factual issues that were overlooked, newly discovered evidence, or a clear error of law or fact that would necessitate a different ruling in order to prevent a manifest injustice. Rather, Prall simply disagrees with this Court's determination that Prall had failed to allege any "extraordinary circumstances" justifying intervention by a federal court in dismissing this habeas petition pursuant to Moore v. DeYoung, 515 F.2d 437 (3d Cir. 1975). Therefore, Prall's only recourse, if he disagrees with this Court's decision, should be via the normal appellate process. He may not

use a motion for reconsideration to re-litigate a matter that has been thoroughly adjudicated by this Court.

B. Motion for Recusal

Title 28 U.S.C. § 455(a) provides, "[a]ny justice, judge or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The other applicable recusal statute, 28 U.S.C. § 144, provides "[w]henever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein."[1] Under 28 U.S.C. § 455(a), it is not the case that a judge should recuse himself where, in his opinion, sitting would be inappropriate. The correct inquiry is whether the judge's impartiality has been reasonably questioned. Blanche Rd. Corp. v. Bensalem Township, 57 F.3d 253, 266 (3d Cir. 1995). An alternative means of recusal is governed under 28 U.S.C. § 144, which enables recusal upon

[1] Here, Prall fails to explicitly move under either § 455(a) or § 144. However, the Court is satisfied that the motion can be analyzed by this Court under both § 455(a) and § 144. If a recusal motion is made pursuant to § 455, the questioned judge is entitled to rule upon the motion. If the motion is made pursuant to § 144, another judge must rule on the recusal motion so long as the supporting affidavit meets the "sufficiency test." In re Kensington Int'l Ltd., 353 F.3d 211, 224 (3d. Cir. 2003). The Court is satisfied that the supporting affidavit does not meet the "sufficiency test," and, hence, may be ruled upon by this Court.

timely submission of an affidavit and supporting certificate of good faith.

Here, Prall has failed to submit a certified or notarized affidavit. Rather, he provides only a motion alleging grounds for recusal based on unsupported, conclusory statements.[2] The Court of Appeals for the Third Circuit has held that the challenged judge must determine only the sufficiency of the affidavit, not the truth of the assertions. Mims v. Shapp, 541 F.2d 415, 417 (3d Cir. 1976). The Third Circuit also has held that the allegations in a § 144 affidavit must convince a reasonable person of the Judge's partiality. United States v. Dansker, 537 F.2d 40, 53 (3d Cir. 1976).

The Court is not convinced that recusal is appropriate under either 28 U.S.C. § 455(a) or 28 U.S.C. § 144. The Court declines to recuse itself under § 455, as the Court is not convinced that its impartiality has been reasonably questioned. Blanche Rd., 57 F.3d at 266 (holding that the correct inquiry is whether the

[2] The Court is aware of judicial decisions in the Third Circuit that have questioned the validity of disqualification motions submitted in response to adverse rulings. In re Kensington Int'l Ltd., 368 F.3d 289, 314-315 (3d Cir. 2004)(positing that when a party "is aware of the grounds supporting recusal, but fails to act until the judge issues an adverse ruling, the recusal [typically] is not timely.") Given such authority, the Court would find that Prall's recusal motion is not timely. Nevertheless, the timeliness of Prall's motion is of little significance, as the Court holds that Prall's motion is wholly conclusory and insufficient to convince a reasonable person of the Court's alleged bias.

judge's impartiality has been reasonably questioned). The Court is satisfied that a reasonable person would not be convinced of the Court's alleged bias after reading Prall's moving papers. Prall's motion is largely conclusory and devoid of factual allegations that would render recusal appropriate. Liteky v. United States, 510 U.S. 540, 555 (1994). Similarly, removal under 28 U.S.C. § 144 is not appropriate. Section 144 requires an affidavit of fact that must convince a reasonable person of the Judge's partiality. Dansker, 537 F.2d at 53. Here, Prall's motion simply concludes that bias and collaboration has occurred, without including assertions of fact in support of these conclusions. A conclusory affidavit is not sufficient for recusal. Smith v. Vidonish, 210 Fed. Appx .152, 155 (3d Cir. 2006)(holding that conclusory statements in a recusal affidavit need not be credited).

Thus, Prall's motion is nothing more than a litany of vituperative and conclusory allegations of this Court's alleged bias, incompetence, and collaboration without one iota of fact to support the bald accusations. It is well-established that a court need not credit conclusory allegations or legal conclusions. Morse v. Lower Merion School District, 132 F.3d 902, 906 n. 8 (3d Cir.1997). See also Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949-50 (2009). It is abundantly clear that Prall has made these unwarranted and baseless assumptions based on the

fact that he was unsuccessful in bringing his habeas petition. A party's disagreement with a Court's ruling is not a basis for recusal; otherwise any unsuccessful litigant would be able to disqualify the Judge who rendered the unfavorable ruling. In re TMI Litig., 193 F.3d 613, 728 (3d Cir. 1999).

Accordingly, as Prall has not met the requirements of 28 U.S.C. § 455(a) or 28 U.S.C. § 144, his motion for recusal must be denied.

III. CONCLUSION

Therefore, for the reasons expressed above, Prall's motion for vacatur and recusal (docket entry no. 4) will be denied for lack of merit. An appropriate Order follows.

/s/ NOEL L. HILLMAN
NOEL L. HILMAN
United States District Judge

At Camden, New Jersey
Dated: JUNE 29, 2010