

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

TERRY DAUM,

Petitioner,

- versus -

THOMAS LAVALLEY, Superintendent,  
Clinton Correctional Facility

Respondent.

ORDER

13-cv-3730

JOHN GLEESON, United States District Judge:

On June 24, 2013 Terry Daum, proceeding *pro se*, filed this petition pursuant to 28 U.S.C. § 2254 challenging his 1997 conviction in New York Supreme Court, Richmond County. ECF No. 1. Daum previously challenged this same conviction by filing a petition pursuant to 28 U.S.C. § 2254 on October 1, 2001. *Daum v. Ricks*, No. 01-cv-6520, ECF No. 2. Magistrate Judge Lois Bloom denied that petition on April 4, 2005.<sup>1</sup> *Daum v. Duncan*, No. 01-cv-6520, ECF No. 67. On August 10, 2006, the Court of Appeals for the Second Circuit denied Daum's motion for a certificate of appealability and dismissed Daum's appeal. *Daum v. Ricks*, No. 01-cv-6520, ECF No. 83.

Daum's present petition also seeks relief pursuant to Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 60(b) and 60(d) to vacate Magistrate Judge Bloom's denial of his prior petition for habeas relief. Magistrate Judge Bloom denied Daum's Fed. R. Civ. P. 60(b) and 60(d) motion on August 19, 2013. *Daum v. LaValley*, No. 01-cv-6520, ECF No. 103. That

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<sup>1</sup> The parties consented to all proceedings before a Magistrate Judge pursuant to 28 U.S.C. § 636(c)(1).

portion of this petition that seeks relief pursuant to Fed. R. Civ. P. 60(b) and 60(d) is therefore dismissed.

To the extent that the petition requests relief pursuant to 28 U.S.C. § 2254, it is a “successive petition,” and is hereby transferred to the Court of Appeals for the Second Circuit. 28 U.S.C. § 1631; *see Liriano v. United States*, 95 F.3d 119 (2d Cir. 1996). Accordingly, the Clerk of the Court is directed to transfer Daum’s application and a copy of this order to the Clerk of the Court of Appeals for the Second Circuit and to mark this matter closed. If the Second Circuit authorizes Daum to proceed in this matter, Daum shall move to reopen this case under this docket number.

So ordered.

John Gleeson, U.S.D.J.

Dated: August 22, 2013  
Brooklyn, New York