

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT COLUMBUS**

GERALD HAND,

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Case No. 2:07-cv-846

Petitioner,

-vs-

District Judge Sandra A. Beckwith  
Magistrate Judge Michael R. Merz

MARC HOUK, Warden,

Respondent.

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**SCHEDULING ORDER RE MOTION FOR CERTIFICATE OF  
APPEALABILITY**

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This capital habeas corpus case is before the Court on Petitioner's Motion to Alter or Amend Order Denying Habeas Relief (Doc. No. 121).

Petitioner argues the Motion as if made under Fed. R. Civ. P. 59(e) and asserts it is timely because filed within the period for filing a Rule 59(e) motion as extended by the Court on Petitioner's unopposed motion (See Motion, Doc. No. 120, and notation order granting). If the Motion were truly required to be considered under Fed. R. Civ. P. 59(e), it would be untimely because district courts lack authority to extend the time for filing Rule 59(e) motions. See Fed. R. Civ. P. 6(b)(2). There is extensive authority for the proposition that this limit on district court authority is jurisdictional and therefore a purported extension of Rule 59(e) time does not extend the time for appeal. See Wright, Miller & Kane, Federal Practice and Procedure 3d § 2817, cases cited at nn. 9 & 13.

However, there is no final judgment in this case because the Court has not yet decided any motion for certificate of appealability. In her Order adopting the Magistrate Judge's recommendations in this case, Judge Beckwith referred the case for a supplemental report on petitioner's expected motion for certificate of appealability (Doc. No. 118, PageID 2945). The same day, the Magistrate Judge confirmed that, under the prior schedule set July 15, 2011, Hand's motion for certificate of appealability would be due to be filed not later than June 28, 2013 (Doc. No. 119). Two days before that deadline, Petitioner's counsel filed his "Unopposed Motion for Extension of Time to File a Motion for Reconsideration and a Certificate of Appealability" (Doc. No. 120). That Motion was granted by notation order and the instant Motion followed.

The Court will treat the instant Motion as one for reconsideration. However, it does not contain any argument about why a certificate of appealability should be granted. The only reference to that question in the Motion is at footnote 2 which reads:

Hand does not attack each and every aspect of the Court's ruling in this motion. Rather, Hand raises only certain issues for which he believes reconsideration is warranted. Hand does not concede that the issues upon which he does not seek Rule 59(e) relief were properly decided, nor does he waive his ability to seek a certificate of appealability as to those issues.

(Doc. No. 121, PageID 2953.)

The Court extended Petitioner's time to seek a certificate of appealability only until July 28, 2013. There is no doubt of this Court's authority to control the timing of motion practice in this as in other cases on its docket. In other words, although "death is different," it is not different in this respect.

To dispel any misconception about deadlines and to protect Petitioner's position, the

Court *sua sponte* extends the time for filing a motion for certificate of appealability to and including September 23, 2013. The Motion must be filed by that date.

September 11, 2013.

s/ ***Michael R. Merz***  
United States Magistrate Judge