

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

**ROBERT ACORD,**

**Petitioner,**

**v.**

**CASE NO. 2:12-CV-355**

**JUDGE JAMES L. GRAHAM**

**Magistrate Judge Elizabeth P. Deavers**

**WARDEN, ROSS CORRECTIONAL  
INSTITUTION,**

**Respondent.**

**OPINION AND ORDER**

This matter is before the Court pursuant to the remand of the United States Court of Appeals for the Sixth Circuit for further proceedings addressing Petitioner's challenge under Rule 60(b) of the Federal Rules of Civil Procedure to the denial of his claims under 28 U.S.C. § 2254 as procedurally defaulted. *See Order, In re Acord*, No. 13-4198 (6th Cir. July 15, 2014) (Doc. No. 23.) For the reasons that follow, Petitioner's Rule 60(b) motion (Doc. No. 21) is **DENIED.**

The initial filing of Petitioner's § 2254 petition failed to comply with Rule 2(c) of the Rules Governing Section 2254 Cases in the United States District Courts. This Court therefore could not determine the nature of the claims alleged aside from a claim under the Fourth Amendment, which the Court dismissed on the merits. In his *Objection* to the Magistrate Judge's recommendation of dismissal of this case, however, Petitioner asserts that he was denied a fair trial due to judicial and prosecutorial misconduct; denied effective assistance of counsel; sentenced under a void and facially unconstitutional statute; denied the right to a speedy trial; and is the "victim of corruption of blood." *See Opinion and Order* (Doc. No. 19, PageID# 616.) Petitioner also maintains that he was denied due process at sentencing; convicted in violation of

the Double Jeopardy Clause; and denied the right to review the Presentence Investigation Report. (PageID# 616-17.) This Court dismissed all of these claims as procedurally defaulted. PageID#617.

Petitioner seeks relief from final judgment of dismissal of these claims as procedurally defaulted pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, which provides, in relevant part:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

As grounds for his Rule 60(b) motion, Petitioner asserts that the Court improperly denied his claims as procedurally defaulted. *Motion for Relief [from] Judgment* (Doc. No. 21, PageID# 636, 640.) He argues that Ohio's doctrine of *res judicata* does not apply to him because the state courts failed to specify the basis for applying *res judicata* to his claims or failed to issue a final judgment entry specifying the grounds upon which *res judicata* barred his claims. (PageID# 641-42.) Petitioner asserts that he is actually innocent of the charges against him and

the victim of a manifest miscarriage of justice. (PageID# 645.) Petitioner also alleges that his convictions are void or a legal nullity due to the state courts' failure to issue a valid final appealable order. (PageID# 641-43.) In support, of this Rule 60(b) motion, Petitioner has attached a document addressing the procedural posture of his case. *See Exhibit 1 to Motion for Relief from Final Judgment* (PageID# 648).

Petitioner raises no new arguments not already been addressed in this Court's final judgment of dismissal. He presents no grounds justifying reconsideration of the dismissal of his claims as procedurally defaulted.

This entire action appears to be barred under the one-year statute of limitations pursuant to 28 U.S.C. § 2244(d). The Court nonetheless dismissed Petitioner's claims as waived due to his failure to establish cause for his procedural defaults. Petitioner now complains in his Rule 60(b) motion that the Court erred in its determination that his claims are barred by an unexcused procedural default.

Petitioner waived all of his claims by either failing to raise them on direct appeal or in post-conviction proceedings and by failing to timely appeal the trial court's dismissal of his motions to dismiss on speedy trial grounds and motion to withdraw his guilty pleas as coerced. He raised some of his habeas corpus claims in the first instance in a habeas corpus petition in the Ohio Supreme Court. As previously discussed, however, Petitioner did not thereby properly preserve these claims for review. *See e.g., Boles v. Knab*, 130 Ohio St.3d 339 (Ohio 2011)(speedy trial and double jeopardy claims are not cognizable in habeas corpus and must be raised on direct appeal); *Billiter v. Banks*, 135 Ohio St. 3d 426, 428 (Ohio 2013)("habeas corpus is not available when there is an adequate remedy in the ordinary course of law")(citation omitted). Petitioner complains that the courts failed to issue any legally appropriate judgments

from which he could pursue an appeal or which properly identified the basis for the *res judicata* bar. As this Court has already discussed, the state courts did not have the opportunity to address his procedural default due to the nature of his default. Moreover, the record fails to support Petitioner's claim that the state courts failed to issue any valid judgment from which he could file an appeal. *See Exhibits 6, 13, 16, 22, 24 to Return of Writ*. The record fails to reflect that Petitioner attempted to file an appeal but was prevented from doing on this basis. To the extent that Petitioner now raises a claim that the state courts' judgment of conviction is void, that claim likewise is waived, because Petitioner never raised the issue in the Ohio courts. Finally, for the reasons already addressed in this Court's final judgment of dismissal, Petitioner has failed to establish cause for his procedural defaults. Petitioner has failed to establish that he is actually innocent and the victim of a manifest miscarriage of justice. He raises no new grounds to warrant this Court's reconsideration of that issue here. He presents no new reliable evidence establishing his factual innocence of the charges against him. Further, the record does not indicate that this case is of the rare or extraordinary type justifying a merits review of his otherwise procedurally defaulted claims. *See Souter v. Jones*, 395 F.3d 577, 589 (6th Cir. 2005)(footnote and citations omitted); *see also McQuiggin v. Perkins*, -- U.S. --, 133 S.Ct. 1924, 1931-32 (2013).

**WHEREUPON**, Petitioner has failed to raise any grounds justifying reconsideration of the dismissal of his claims as procedurally defaulted under Rule 60(b). His *Motion for Relief from Final Judgment* (Doc. No. 21) therefore is **DENIED**.

**IT IS SO ORDERED.**

Date: July 24, 2014

s/James L. Graham  
JAMES L. GRAHAM  
United States District Judge