

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ANTONIO SANCHEZ FRANKLIN,

Petitioner, :

Case No. 3:04-cv-187

- vs -

NORMAN ROBINSON, Warden,

Respondent. :

Magistrate Judge Michael R. Merz

**DECISION AND ORDER DENYING MOTION FOR
RECONSIDERATION**

This capital habeas corpus case is before the Court on Antonio Franklin's Motion for Reconsideration (Doc. No. 189) of the Court's Decision and Order Denying *Pro Se* Motion for Relief from Judgment (the "Decision," Doc. No. 183). The Warden opposes the Motion (Doc. No. 190) and Franklin has filed a *pro se* Response to the Warden's opposition (Doc. No. 192).

In his *Pro Se* Motion for Relief from Judgment, Franklin sought to raise six claims under Fed. R. Civ. P. 60(b)(1) and ten claims under Fed. R. Civ. P. 60(b)(6). The Decision held the claims proffered under 60(b)(1) were untimely (Decision, Doc. No. 183, PageID 2705-06).

As to the claims made under Fed. R. Civ. P. 60(b)(6), the Court found Claims 1-8 were barred by Franklin's failure to obtain permission to file them from the Sixth Circuit as required by 28 U.S.C. § 2244(b)(2) (Decision, Doc. No. 183, PageID 2707-10). Franklin agreed to drop Claims 9 and 10. *Id.* at PageID 2710.

In his Motion for Reconsideration, Franklin asserts that the claims evaluated under Fed. R. Civ. P. 60(b)(1) would more properly be considered under Fed. R. Civ. P. 60(a) and therefore

not be subject to the time limitation which applies to 60(b)(1) Motions (Doc. No. 189, PageID 11698). The Warden responds that Rule 60(a) is applicable only to clerical mistakes and does not permit a court to reconsider legal analysis (Response, Doc. No. 190). Franklin's Response (Doc. No. 192) claims Fed. R. Civ. P. 60(a) is available when a court has overlooked the "true crux" of a case, as he claims occurred here.

The Warden's interpretation of Fed. R. Civ. P. 60(a) is the correct one. "Subdivision (a) deals solely with the correction of errors that properly may be described as clerical or as arising from oversight or omission." Wright, Miller, & Kane, Federal Practice and Procedure §2854. The errors Franklin believes exist in the Court's final decision in this case are not the result of "oversight" in the sense intended by the drafters of Rule 60(a).

The Motion for Reconsideration is DENIED.

December 18, 2014.

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