IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Richmond Division

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)	Civil Action No. 3:14CV72-HEH
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MEMORANDUM OPINION (Denying Rule 60(b) Motion)

By Memorandum Opinion and Order entered on March 14, 2014, the Court dismissed for want of jurisdiction a 28 U.S.C. § 2241 petition submitted by Abdul-Aziz Rashid Muhammad. On May 6, 2014, the Court received a Motion for Relief Pursuant to Rule 60(b)(4) ("Rule 60(b) Motion")¹ from Muhammad wherein he argues that the March 14, 2014 Memorandum Opinion and Order is void and "should be vacated without prejudice" because he filed a motion to withdraw prior to the entry of the Memorandum Opinion and Order. (Rule 60(b) Mot. 2, ECF No. 14 (emphasis omitted).)

Fed. R. Civ. P. 60(b).

¹ Federal Rule of Civil Procedure 60(b) provides, in pertinent 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:

⁽⁴⁾ the judgment is void

A party seeking relief under Federal Rule of Civil Procedure 60(b) must make a threshold showing of "timeliness, a meritorious defense, a lack of unfair prejudice to the opposing party, and exceptional circumstances." *Dowell v. State Farm Fire & Cas.*Auto. Ins. Co., 993 F.2d 46, 48 (4th Cir. 1993) (quoting Werner v. Carbo, 731 F.2d 204, 207 (4th Cir. 1984)). After a party satisfies this threshold showing, "he then must satisfy one of the six specific sections of Rule 60(b)." Id. (citing Werner, 731 F.2d at 207).

While Muhammad has timely filed his Rule 60(b) Motion, nevertheless, relief under Rule 60(b) is an "extraordinary" remedy "and is only to be invoked upon a showing of exceptional circumstances." *Compton v. Alton S.S. Co., Inc.*, 608 F.2d 96, 102 (4th Cir. 1979) (citations omitted). Muhammad fails to demonstrate any such exceptional circumstances that would warrant vacating the prior dismissal of his § 2241 motion.

Even if Muhammad met the threshold requirements for bringing a Rule 60(b) Motion, he fails to demonstrate that he is entitled to relief under Rule 60(b)(4). A judgment is "void" for the purposes of Rule 60(b) "only if the court rendering the decision lacked personal or subject matter jurisdiction or acted in a manner inconsistent with due process of law." Wendt v. Leonard, 431 F.3d 410, 412 (4th Cir. 2005) (citing Eberhardt v. Integrated Design & Constr., Inc., 167 F.3d 861, 871 (4th Cir. 1999)).

Courts "narrowly construe the concept of a 'void' order under Rule 60(b)(4) precisely because of the threat to the finality of judgments" Id. (citation omitted).

Muhammad argues that the Court should have dismissed the action without prejudice because he filed his motion for voluntary dismissal "[o]n or about February

11th, 2014" which was "more than a month before the [Court's] Order." (Rule 60(b) Mot. 1.) The Court received the motion for voluntary dismissal on March 20, 2014, which Muhammad mailed from Petersburg, Virginia and had a postmark of March 19, 2014. (ECF No. 13, at 3.) Muhammad fails to provide any argument suggesting that the Court lacked jurisdiction or acted in a manner inconsistent with due process in dismissing his § 2241 petition for want of jurisdiction prior to receiving his motion to voluntarily dismiss the action. Thus, Muhammad fails to demonstrate that the Court's dismissal of his § 2241 motion was "void" within the meaning of Rule 60(b)(4).

Accordingly, Muhammad's Rule 60(b) Motion (ECF No. 14) will be denied.

An appropriate Final Order will follow.

HENRY E. HUDSON
UNITED STATES DISTRICT JUDGE

Date: S.p. 4 2014 Richmond, Virginia