

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

WAYNE RALPH MARSHALL,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 3:22-cv-799-HEH
)	
DIRECTOR, D.O.C.,)	
CORRECTIONS,)	
)	
Respondent.)	

**MEMORANDUM OPINION
(Denying Rule 59(e) Motion)**

Wayne Ralph Marshall (“Petitioner”), a Virginia prisoner proceeding *pro se*, submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his convictions in the Circuit Court for the City of Virginia Beach for murder, robbery, malicious wounding, abduction, abduction with intent to extort money, two counts of unlawful wounding, and use of a firearm. (ECF No. 1 at 2.) It appeared that the Court already had denied a 28 U.S.C. § 2254 petition with respect to the convictions. *Marshall v. Vachris*, 1:02CV816-GBL (E.D. Va. Oct. 15, 2003) (ECF No. 17.) Accordingly, by Memorandum Order entered on December 28, 2022 (ECF No. 3), the Court directed Petitioner, within thirty (30) days of the date of entry thereof, to show cause why the present § 2254 Petition should not be dismissed as a successive, unauthorized 28 U.S.C. § 2254 petition.¹

¹ The Antiterrorism and Effective Death Penalty Act of 1996 restricted the jurisdiction of the district courts to hear second or successive applications for federal habeas corpus relief by prisoners attacking the validity of their convictions and sentences by establishing a “gatekeeping

Petitioner responded. (ECF No. 4.) However, Petitioner failed to advance any reason that would allow the Court to review his successive 28 U.S.C. § 2254 Petition. The Court had not received authorization from the Fourth Circuit to file the present § 2254 Petition. Therefore, by Memorandum Opinion and Order entered on February 16, 2023 (ECF Nos. 5, 6), the Court dismissed the action without prejudice for want of jurisdiction.

On March 9, 2023, Petitioner filed a “Motion for Rule 60(b)(6).” (ECF No. 9.) Because Petitioner filed his motion within twenty-eight days of the February 16, 2023 Memorandum Opinion and Order, the Court construes Petitioner’s motion as filed pursuant to Federal Rule of Civil Procedure 59(e) (“Rule 59(e) Motion”). *See MLC Auto., LLC v. Town of S. Pines*, 532 F.3d 269, 277 (4th Cir. 2008) (citing *Dove v. CODESCO*, 569 F.2d 807, 809 (4th Cir. 1978)).

“[R]econsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” *Pac. Ins. Co. v. Am. Nat’l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (internal quotation marks omitted). The Fourth Circuit recognizes three grounds for relief under Rule 59(e): “(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *Hutchinson v. Staton*, 994 F.2d 1076,


mechanism.” *Felker v. Turpin*, 518 U.S. 651, 657 (1996) (internal quotation marks omitted). Specifically, “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A).

1081 (4th Cir. 1993) (citing *Weyerhaeuser Corp. v. Koppers Co.*, 771 F. Supp. 1406, 1419 (D. Md. 1991); *Atkins v. Marathon LeTourneau Co.*, 130 F.R.D. 625, 626 (S.D. Miss. 1990)).

In his Rule 59(e) Motion, Petitioner states in cursory fashion, *inter alia*, that he is actually innocent and perjured testimony was used to obtain his conviction. However, the Rule 59(e) Motion fails to satisfy any of the above listed grounds for Rule 59(e) relief. Specifically, Petitioner fails to demonstrate that the dismissal of his § 2254 Petition as an unauthorized, successive petition was erroneous. Accordingly, the Rule 59(e) Motion (ECF No. 9) will be denied. A certificate of appealability will be denied.

An appropriate Final Order will accompany this Memorandum Opinion.

Date: July 27, 2023
Richmond, Virginia



Henry E. Hudson
Senior United States District Judge