APPENDIX A

FILED
[STAMP]
Aug 10, 2015
[REDACTED]

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DONNIE E. JOHNSON, Petitioner-Appellant, v. WAYNE CARPENTER, Warden Respondent-Appellee.	No. 13-5537 ORDER

Before **BOGGS, NORRIS**, and **CLAY**, Circuit Judges.

Donnie E. Johnson, a Tennessee prisoner under a death sentence, appeals from a district court order denying his Fed. R. Civ. P. 60(b)(6) motion for relief from the court judgment's dismissing his petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. The case is now pending before this court for review of Johnson's application for a certificate of appealability (COA).

In 1985, a Tennessee jury convicted Johnson of first-degree murder, and the jury recommended that Johnson be sentenced to death. The trial court accepted this recommendation and imposed the death penalty on Johnson. The Tennessee Supreme Court affirmed Johnson's conviction and sentence on direct appeal. *State v. Johnson*, 743 S.W.2d 154, 160 (Tenn. 1987).

In 1997, Johnson filed his § 2254 habeas petition. The district court determined that Johnson's claims were without merit and dismissed the petition. On appeal, this court affirmed the district court's judgment. *Johnson v. Bell*, 344 F.3d 567, 575 (6th Cir. 2003).

In March 2013, Johnson filed his current Rule 60(b)(6) motion, asking the district court to reconsider its previous dismissal, on the basis of procedural default, of two claims because of a change in the law. The district court denied Johnson's motion as meritless, and Johnson has timely appealed that decision. Johnson requests that this court issue him a COA for the following issue: whether the recent Supreme Court decisions in *Trevino v. Thaler*, 133 S. Ct. 1911 (2013), and *Martinez v. Ryan*, 132 S. Ct. 1309 (2012), are extraordinary circumstances warranting relief under Rule 60(b)(6). Johnson also moves this court to grant him in forma pauperis (IFP) status.

Under 28 U.S.C. § 2253(c)(2), the court may grant a COA for an issue raised in a § 2254 petition only if the petitioner has made a substantial showing of the denial of a federal constitutional right. A petitioner satisfies this standard by demonstrating that reasonable jurists could disagree with the district court's resolution of his constitutional claims or that jurists could conclude that the issues raised are adequate to deserve further review. *Miller-El v. Cockrell*, 537 U.S. 322, 327, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The petitioner is not required to show that the appeal will succeed to be granted a COA, and the court should not deny a COA merely because it believes that the petitioner fails to

demonstrate an entitlement to relief. *Miller-El*, 537 U.S. at 337.

Upon review, we conclude that Johnson has not made a substantial showing of the denial of a federal constitutional right. It "is well established that a change in decisional law is usually not, by itself, an 'extraordinary circumstance' meriting Rule 60(b)(6) relief." *McGuire v. Warden, Chillicothe Corr. Inst.*, 738 F.3d 741, 750 (6th Cir. 2013)(quoting *Stokes v. Williams*, 475 F.3d 732, 735 (6th Cir. 2007)). This court has concluded that *Martinez* and *Trevino* do not sufficiently change the balance of the factors for consideration under Rule 60(b)(6) to warrant relief. *Id.* at 750-51.

Accordingly, we deny Johnson's application for a COA. We also deny his motion for IFP status as moot.

ENTERED BY ORDER OF THE COURT