IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BARTON RAY GAINES,	§	
	§	
Petitioner,	§	
	§	
v.	§	No. 4:08-CV-147-Y
	§	
NATHANIEL QUARTERMAN, Director, Texas Department of Criminal Justice, Correctional Institutions Division,	§	
	§	
Respondent.	§	

ORDER DENYING RELIEF

Petitioner, Barton Ray Gaines, has filed in this habeas-corpus proceeding "Petitioner's Motion for Relief from Judgment" (doc. 18); an "Amended Petition for a Writ of Habeas Corpus by a Person in State Custody" accompanied by a supporting affidavit and appendices (docs. 19-21); "Petitioner's Motion to Recuse Means" accompanied by a supporting memorandum and "Petitioner's Request for Hearing on his Motion to Recuse Judge Means" (docs. 22-24); and "Petitioner's Deposition on Written Questions" for Baxter Morgan, Charles Bleil, Mehdi Michael Mowla, Robert K. Gill, and Terry R. Means (doc. 25).

Petitioner seeks relief from the Court's October 14, 2008 judgment (doc. 14) dismissing his petition under 28 U.S.C. § 2254 as time barred. In the motion, Petitioner asserts that he is entitled to relief from the judgment under Rule 60(b)(6) "because of a newly discovered conflict of interest (dual representation)

existing during the previous habeas proceedings." (Id. at 8.) Specifically, he asserts that his habeas counsel, M. Michael Mowla, "had conflicts of interests because:

> (1) he, of course, was petitioner's 11.07 and 2254 counsel; and
>
> (2) he, according to this newly discovered conflicts(s), was Daniel[] [Aranda's habeas attorney at the same time he was petitioner's habeas attorney, who (Daniel) according to Tiffani Anne Phillips-Brooks-Bearden's misconstrued and misrepresented testimony (via Westfall (Greg)) was petitioner's extraneous codefendant."

(Id. at 7 (footnotes omitted).) According to Petitioner,

> Mowla, unbeknownst to petitioner hitherto, represented both petitioner and Daniel Aranda on their habeas corpses [sic] at the same time, and, as such, he (Mowla) could not have reasonably been expected to argue:
>
> a. Westfall (Greg) [Petitioner's trial attorney] was ineffective because petitioner didn't **commit** the extraneous, and/or
>
> b. Westfall (Greg) was ineffective because petitioner was not criminally responsible for the extraneous;
>
> less he (Mowla) risked exposing Daniel to another round of litigation (this time for the extraneous) with evidence he (Mowla) no doubt feared would be gleaned therefrom (the habeas litigation).

(Id. at 10 (footnotes omitted) (emphasis in original).) Petitioner asserts that he did not become aware of Mowla's dual representation earlier because

> Respondent refused his (petitioner's) *Freedom of Information Act* ("FOIA") requests under *Texas Government Code* § 552.028 (i.e., because he was in prison), until he made parole and respondent was no longer able to deny him access thereunder (which ultimately led to his extraordinary discovery; i.e., Mowla's dual representation).

(Id. at 13 (footnotes omitted) (emphasis in original).)

To the extent Petitioner moves to reopen his initial federal habeas proceeding to assert new claims based on new evidence, the motion is, in substance, a second or successive § 2254 petition and must be dismissed. 28 U.S.C. § 2244(b)(1); *Gonzalez v. Crosby*, 532 U.S. 524, 532 (2005); *Preyor v. Davis*, 704 Fed. App'x 331, 339 (5th Cir.), *cert. denied*, 138 S. Ct. 35 (2017).

To the extent Petitioner moves to reopen his initial federal habeas proceeding based on Rule 60(b)(6), having been filed more than 12 years after entry of the Court's judgment, the motion was not filed within a reasonable time and is untimely. FED. R. CIV. P. 60(c)(1). Nor does he present "extraordinary circumstances" justifying the reopening of the proceeding. *See Crosby*, 545 U.S. at 536. In fact, "[s]uch circumstances will rarely occur in the habeas context." *Id.* at 535.

Based on the foregoing, Petitioner's motion is DISMISSED, in part, and DENIED, in part. All other pending motions are DENIED.

A movant may not appeal a final order in a habeas-corpus proceeding, including an order on a motion for relief from a judgment, "[u]nless a circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c)(1)(B). A certificate of appealability "may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2). In cases where a district court rejects a petitioner's claim(s) on the merits, "[t]he petitioner must

demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). To warrant a grant of the certificate as to claims that the district court rejects solely on procedural grounds, the movant must show both that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* Here, reasonable jurists would not debate the Court's procedural rulings and/or its conclusion that Petitioner's motion does not meet the criteria for obtaining relief under Rule 60(b)(4) or (6). Accordingly, Petitioner is not entitled to a certificate of appealability.

SIGNED March 11, 2021.

Terry R. Means

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE