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STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
)
 Emory W. Roberts, Jr. #373393,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

S.C. SUPREME COURT

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2020-CP-08-01349

**Return Opposing Motion to Reconsider
and Rule 60(b) Motions**

2025 OCT - 9 AM 11:23
 LEAH GUERRY DUPREE
 CLERK OF COURT
 BERKELEY COUNTY, SC

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 FILED

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Emory W. Roberts (Applicant) on July 2, 2020. Respondent made its return requesting an evidentiary hearing. On April 18, 2023, an evidentiary hearing convened before the Honorable R. Kirk Griffin. Applicant was present and proceeded pro se. Assistant Deputy Attorney General Taylor Z. Smith represented Respondent. At the hearing, the Court heard testimony from trial counsel Timothy L. Griffith, Esquire; SLED Agent Justin Wingo; Appellate Defender Susan Hackett; Assistant Attorney General Joshua Underwood; and Assistant Attorney General David Fernandez. Following the hearing and after reviewing the records, this Court issued an order denying relief. Applicant has now filed a motion to reconsider pursuant to Rule 59(e), SCRPC, and Motions to Set Aside Judgment pursuant to Rule 60(b), SCRPC. As set forth herein, Applicant has not pointed out anything that the PCR court overlooked or misapprehended; thus, the Motion to Reconsider should be denied without a hearing. Likewise, Applicant has not set forth a basis to set aside this judgment, and the Rule 60(b) motions should be denied without a hearing.

PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections serving an aggregate twenty-five-year sentence. In April 2016, the South Carolina State Grand Jury indicted Applicant

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and five co-conspirators under a multi-count indictment stemming from drug trafficking ring in Dorchester and Berkeley Counties (2016-GS-47-02). Applicant was indicted for trafficking heroin, twenty-eight grams or more; trafficking heroin, four to fourteen grams; three counts of distribution of heroin; one count of possession with intent to distribute (PWID) methamphetamine, and one count of possession of a firearm during the commission of a violent crime.

On November 24-28, 2017, Applicant and codefendant Justin Hunter proceeded to a jury trial before the Honorable Deadra L. Jefferson. Timothy Griffin, Esquire, represented Applicant, and Assistant Attorney Generals Joshua Underwood and David Fernandez prosecuted the case. The jury convicted Applicant as indicted, and Judge Jefferson sentenced him to concurrent terms of twenty-five years for trafficking heroin, twenty-eight grams or more; fifteen years for each of the remaining drug charges; and five years for the weapon charge.

Applicant filed a notice of appeal, which was perfected by Appellate Defender Susan B. Hackett. On appeal, Applicant argued the trial court violated his right to self-representation by denying his request to proceed pro se. The Court of Appeals affirmed on the merits. State v. Roberts, 2020-UP-017 (filed Jan. 29, 2020). Applicant filed a petition for a rehearing, which was denied. Applicant also filed a petition for a writ of certiorari in the Supreme Court of South Carolina, which was denied. The remittitur was sent October 19, 2020.

CURRENT APPLICATION

On June 2, 2020, Applicant filed this PCR application alleging:

1. Denied 6th and 14th Amendment to be informed of nature and cause: Denied notice;
2. Judicial misconduct: trial court exceeded its jurisdiction to impose sentence, trial court committed 'fraud on the court';
3. Ineffective assistance of counsel: Trial counsel conspired with prosecution on unfounded offenses;
4. Prosecutorial misconduct: prosecutor impaired grand jury's

independent role.

As relief, Applicant requested “For sentence to be vacated and indictment dismissed with prejudice.” Applicant attached to his application a “brief” further addressing his claims.

On May 13, 2021, Applicant filed a “subsequent application” alleging:

- a. Conspiracy against public justice;
- b. Corruption;
- c. Prosecutorial misconduct – Brady violation;
- d. Fraud upon the Court;
- e. Judicial Misconduct;
- f. Ineffective assistance of counsel;
- g. Perjury;
- h. Lack of subject matter jurisdiction to convict;
- i. Due process violations;
- j. Ineffective appellate counsel;
- k. Trial court error;
- l. Lack of indictment, etc.

Applicant attached nine briefs in support of his claims. At the PCR hearing, he focused primarily on his claim that the State Grand Jury did not meet to indict him and the general sessions court thus lacked subject matter jurisdiction over his criminal trial.

On August 29, 2024, this Court issued an order denying relief. Pertinently, this Court found Applicant did not prove a due process violation on his claims that (a) he lacked notice of his charges, (b) the indictment was insufficient and the State Grand Jury did not meet to indict him, (c) he did not receive empanelment documents, and (d) the State did not present sufficient evidence to convict him. Likewise, this Court found he did not prove counsel was ineffective for (a) conspiring with the prosecution, (b) stipulating to the chain of custody, (c) not objecting to him not having the empanelment documents, (d) not objecting when Agent Wingo testified to statements made by co-defendant Justin Hunter, (e) not presenting an alibi, (f) not presenting exculpatory evidence, and (g) “acting as a prosecutor” and attempting to coerce him to plead guilty.

The Court additionally found Applicant did not prove prosecutorial misconduct based on (a) his allegation that the State Grand Jury did not meet to indict him, (b) his allegation that the State did not provide empanelment documents, (c) an alleged Brady violation, or (d) an alleged a due process violation. The Court also found Applicant did not present evidence that the prosecutor committed fraud on the court, conspired against Applicant, or infringed upon the Grand Jury's ability to exercise independent judgement. Regarding Appellate Counsel, the Court found Applicant did not prove counsel was ineffective for not raising issues regarding the Grand Jury empanelment documents, the letter from Court Administration (which he contends constitutes exculpatory evidence), the circuit court's alleged lack of subject matter jurisdiction, or a conflict of interest with trial counsel. The Court dismissed Applicant's claims of trial court error as not cognizable PCR claims and found Applicant did not submit evidence to prove conspiracy against public justice; corruption; fraud upon the Court; judicial misconduct; or perjury.

RETURN OPPOSING MOTION TO RECONSIDER

Applicant has filed a motion to reconsider raising multiple issues he believes the PCR court overlooked. As part of his Motion, he filed multiple letters. To the extent any of these letters were not entered into evidence at the PCR hearing, they should be stricken and not considered by the Court. As set forth herein, the PCR order is detailed and complete, and Applicant has not set forth any issue, fact, or law the Court overlooked or misapprehended. Thus, this motion should be denied.

Throughout, Applicant raises concerns with the State Grand Jury empanelment documents—an issue that was thoroughly addressed in the order of dismissal. Applicant first alleges counsel was ineffective for not objecting to the denial of State Grand Jury empanelment

documents (M.4 q.1; M.10).¹ This allegation was addressed in the final order. (Or. 8-9, 15).

Applicant next contends the PCR court did not address his claim that counsel was ineffective for not objecting when Agent Justin Wingo read lab reports into the record. (M.3.; M.4 q.2; M.11; M.5 q.6; M.14 q.6). More specifically, he asserts counsel should have objected based on hearsay and the Confrontation Clause. (M.11). This allegation was raised by Applicant at the PCR hearing in the context of his claim that counsel was ineffective for stipulating to the chain of custody for drug evidence.² (PCR Tr. 30-33). This Court addressed this issue in its final order when it (1) found credible trial counsel's testimony that he did not see any issue or basis to object to the chain of custody and (2) found Applicant did not prove any issues with the chain of custody and thus did not prove deficiency or prejudice. (Or. 14-15). At the PCR hearing, Applicant effectively argued that in order for counsel to stipulate to the chain of custody, Applicant had to waive that right on the record. (PCR Tr. 33). This contention patently lacks merit. Once counsel stipulated to the chain of custody (which the PCR court properly found reasonable based on counsel's credible testimony that he did not see a reason to object), there was no basis to object. Thus, Applicant has not set forth a valid basis to reconsider the order of dismissal.

In question three, Applicant asserts counsel failed to object to the infringement of his rights under the State constitution. (M.4, q.3). Specifically, he claims prejudice is presumed when counsel does not receive discovery before voir dire, and because the State did not disclose the

¹ For brevity, Respondent will refer to the Motion to Reconsider as M. In his motion, Applicant raises twenty-nine "questions." Respondent will reference these as "q." followed by the question number.

² To the extent Applicant raises a different argument, that argument was not clearly raised in the application or at the hearing and should not be considered here. Cf. McHenry v. Renne, 84 F.3d 1172, 1179-80 (9th Cir. 1996), (noting the inherent difficulty in "prolix, confusing complaints," which cause undue burden on the judiciary and opposing parties, and affirming the dismissal of a prolix, confusing complaint), quoted *infra* at pg. 12.

empanelment documents, prejudice is presumed. As a legal matter, this lacks merit. See State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (noting a Brady violation occurs only when the evidence is material to guilt or punishment); id. at 453-54, 503 S.E.2d at 220 (“Once a Rule 5 violation is shown, reversal is required only where the defendant suffered prejudice from the violation.”). Further, the PCR Court thoroughly addressed Applicant’s claims related to the empanelment documents in its order of dismissal. (Or. 8-9, 15, 18-19).

In question four, Applicant asserts he suffered prejudice when counsel failed to object and cite controlling precedent regarding his right to mount or prepare a defense, his right to present a complete defense, and the prosecution’s failure to comply with Brady. (M.4 q.4). In support, he again cites his efforts at trial to obtain the empanelment documents. (M.12-13). The issue regarding the empanelment documents was addressed in the PCR court’s order. (Or. 8-9, 15, 18-19). Critically, the PCR court found credible Assistant Attorney General Joshua Underwood’s testimony that the State Grand Jury did meet to indict Applicant, and the empanelment documents were available for counsel’s review. (Or. 7, 9). The court has thoroughly considered this issue.

In question five, Applicant asserts he suffered prejudice when counsel’s errors were so serious as to deprive him a fair trial. In support, he contends “Judge Jefferson infringed [his] due process right to have a judge assigned to his case in a manner free from bias or the desire to influence the outcome of the proceeding.” (M.14). He then—again—complains that he did not receive the empanelment documents and asserts this shows the judge colluded with the prosecution, concealed exculpatory evidence, suppressed “the fact that the State Grand Jury empanelment documents do not ‘legally exist,’” and committed fraud upon the court. (M.14). The issue of the empanelment documents and the allegations of fraud were addressed in the final order. (Or. 8-9, 12, 15, 18-20).

In question seven³, Applicant asserts the introduction of the lab records, in violation of the Confrontation Clause, calls into question the result of his trial. (M.5 q.7; M.14 q.7). More specifically he avers the State failed to produce sufficient evidence that he “purchased, or brought into this State,” trafficking amounts of heroin. The allegation regarding the sufficiency of the State’s evidence was addressed in the PCR court’s order of dismissal. (Or. 10).

In question eight, Applicant contends prejudice is presumed because counsel was not afforded discovery in the form of the empanelment documents. (M.5 q.8; M.15 q.8). He contends counsel was ineffective for failing to investigate and present mitigating evidence regarding Court Administration’s letter to him and again asserts this letter was proof the State Grand Jury never met to indict him. This issue was thoroughly addressed in the final order. (Or. 8-9, 15, 17).

In question nine, Applicant contends he was prejudiced when counsel failed to advocate his cause regarding obtaining the empanelment documents, which he claims violated procedural due process. (M.5 q.9). He further contends counsel did not protect him from a Fourth Amendment violation when he was arrested and allegedly unlawfully detained, as evidenced by the letter from Court Administration. (M.15 q.9). The claims related to the empanelment documents, the letter, and Applicant’s ongoing conspiracy theory that the State Grand Jury did not meet to indict him have been addressed. Any issue related to a Fourth Amendment violation was not clearly raised in the application or at the hearing and should not be considered by this court. Cf. McHenry, 84 F.3d at 1179–80 (noting the inherent difficulty in “prolix, confusing complaints,” which cause undue burden on the judiciary and opposing parties, and affirming the dismissal of a prolix, confusing complaint). To the extent his Fourth Amendment violation is based on his ongoing contention that

³ Question six is combined with question two, above.

he was not properly indicted, this allegation lacks merit.

In question ten, Applicant asserts he was prejudiced by the suppression of the empanelment documents, which were exculpatory. (M.5 q.10). He further alleges the prosecution violated Brady by not disclosing these documents. Again, this issue has been thoroughly addressed.

In question eleven, Applicant contends he was prejudiced when counsel “deliberately failed to introduce exculpatory records into evidence.” (M.6 q.11). He again raises his conspiracy theory that the State Grand Jury did not meet to indict him, which has been thoroughly discussed. (M.15 q.11).

In question twelve, Applicant contends the PCR court failed to analyze the prejudice he suffered to his right to Due Process and the infringement of his right to an impartial judge when the judge (1) infringed his right to mount or prepare a defense; (2) infringed his procedural right; and (3) infringed his rights under the State Constitution. (M.6 q.12). More specifically, he asserts trial counsel did not communicate with him prior to trial. (M.16 q.12). The due process issues raised by Applicant were thoroughly addressed (Or. 4-10), and his allegations that the judge infringed his rights lack specificity. Applicant did not raise any issue regarding counsel’s communication with him prior to trial and cannot raise that issue for the first time in this Motion.

In question thirteen, Applicant asserts the PCR court failed to analyze the prejudice he suffered when the judge denied him due process. (M.6 q.13). In support, he argues counsel abandoned any defense and imposed a guilt-based defense against his wishes. (M.17 q.13). He also contends counsel colluded with the prosecution by stipulating to the chain of custody. (M.17 q. 13). His allegation that counsel abandoned any defense lacks specificity, was not raised clearly in his application, and is refuted by the record. The Court addressed issues regarding the chain of custody (Or. 14-15) and found Applicant did not present credible evidence of collusion (Or. 14).

In question fourteen, Applicant contends he was prejudiced when Court Administration sent him a letter stating the State Grand Jury did not convene on the date he was indicted⁴, and his conviction was therefore obtained by false evidence. (M.6 q. 14). He further contends counsel labored under a conflict of interest by colluding with the prosecution. (M.6 q.14). Again, Applicant's claim that the State Grand Jury did not meet to indict him has been addressed. Further, the PCR court addressed both the letter and Applicant's allegation of collusion between trial counsel and the prosecution. (Or. 8, 14).

In question fifteen, Applicant contends several officers are guilty of kidnapping him because they arrested Applicant; this argument is based, again, on Applicant's belief that the State Grand Jury did not indict him, which he believes is proven by the letter from Court Administration and the State's failure to produce the empanelment documents. (M.6 q.15; M.18). The issue related to the officers kidnapping him was not raised in the application and is not properly raised here. Further, as the issue regarding his indictment has been thoroughly considered by this Court, the allegations that he was kidnapped is patently without merit.

In question sixteen, Applicant asserts trial counsel failed to protect his Fourth Amendment Rights. (M.7 q.16). He then, again, repeats his allegations against the trial judge—i.e. he contends she colluded with the prosecution to conceal exculpatory evidence that the grand jury did not convene to indict him, she acted as both the grand jury and the judge, and she committed fraud upon the court. (M.19-20). Applicant did not clearly raise a Fourth Amendment allegation in his application or at the PCR hearing and cannot do so for the first time in this motion. The remaining allegations were addressed by the PCR court. (Or. 12-13, 20).

⁴ This assertion is not supported by the letter itself.

In question seventeen, Applicant asserts counsel labored under a conflict of interest when he colluded with the prosecution. (M.7 q.17). He further avers counsel was ineffective for not objecting to (1) an alleged Brady violation and (2) the erroneous rulings that denied his substantial right to prepare a defense. (M.7 q.17). Specifically, he claims he was denied his right to a jury trial. (M.21). He further contends the State presented false evidence—to wit, the indictment that he believes was not issued by the State Grand Jury, and he avers the letter from Court Administration constituted newly-discovered evidence. The PCR court addressed allegations related to the indictments (Or. 7-9), the alleged Brady violation (Or. 8-9, 18-19), and the letter from Court Administration (Or. 8). The allegation that he was denied a right to a jury trial is patently without merit and is refuted by the transcript of his trial—where he was convicted by a jury. Finally, although the Court did not address his allegation of a conflict of interest (because it was not clearly raised), the Court *did* address the allegations of collusion (upon which Applicant bases his claim of confliction of interest) and found them without merit. (Or. 14).

In question eighteen, Applicant reiterates his allegations that counsel was ineffective for (1) stipulating to the chain of custody, (2) not objecting to Agent Wingo's testimonial lab reports, (3) not objecting when he was denied his right to mount or prepare a defense, (4) not protecting his rights under the State constitution, and (5) not raising a Brady violation. (M.7 q. 18). These issues have been previously addressed. In addition to the foregoing, as part of question eighteen, Applicant reasserts his argument that the officers who arrested him actually kidnapped him. (M.23-24). Again, this allegation patently lacks merit.

In question nineteen, Applicant contends he was prejudiced because he did not receive notice of the nature of his charges. (M.7 q.19). This issue was addressed in the order of dismissal. (Or. 7). As part of question nineteen, Applicant again alleges his arrest violated the Fourth

Amendment. (M. 25 q. 19). This allegation is patently without merit here where the PCR court determined Applicant was properly indicted.

In question twenty, Applicant questions whether the drug quantity that triggers the mandatory minimum for a drug conspiracy is foreseeable to the defendant. (M.8 q.20). This issue was not clearly raised in his application or at the PCR hearing. Further, it is not a proper allegation for PCR. As part of question twenty, Applicant asserts the trial court lacked subject matter jurisdiction over his criminal trial. (M.26 q.20). This patently lacks merit. See State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”); Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (“The sufficiency of an indictment will no longer be considered an issue of subject matter jurisdiction.”).

In questions twenty-one through twenty-four, Applicant contends counsel was ineffective for not holding the State to its burden of proof. (M.8 q.21-24). The issue regarding the sufficiency of the State’s evidence was addressed in the PCR court’s order. (Or. 10). Although Applicant did not raise this as a claim of ineffective assistance of counsel, Respondent notes counsel did move for a directed verdict, making this an issue more suitable for direct appeal.

In questions twenty-five through twenty-seven, Applicant contends the trial judge committed extrinsic fraud and fraudulent concealment by depriving him of the opportunity to see the empanelment documents, and this fraud deprived him of his right to present his case. (M.9 q.25-27; M.27). This was addressed in the PCR court’s final order and lacks merit. (Or. 12-13, 20). He also asserts the prosecution’s failure to provide the empanelment documents violated Separation of Powers. This issue was not clearly raised in the application or at the PCR hearing and should not be considered. Further, this allegation lacks merit.

In question twenty-eight, Applicant asserts he was deprived of specific information to prepare a defense and prevented from asserting his constitutional protections against double jeopardy. (M.9 q.29). He does not elaborate on what specific information he was deprived of, but to the extent it refers to the empanelment documents, that has been thoroughly addressed.

Finally, in question twenty-nine, Applicant contends counsel was ineffective for not objecting to hearsay statements by Officer Migael Vasquex in violation of the Confrontation Clause. (Tr. 658-660; 675). This issue was not clearly raised in his application or at the hearing and should not be considered by this Court. Cf. McHenry v. Renne, 84 F.3d 1172, 1179–80 (9th Cir. 1996) (“Prolix, confusing complaints such as the ones plaintiffs filed in this case impose unfair burdens on litigants and judges. As a practical matter, the judge and opposing counsel . . . cannot use a complaint such as the one plaintiffs filed, and must prepare outlines Defendants are then put at risk that their outline differs from the judge's, that plaintiffs will surprise them with something new at trial which they reasonably did not understand to be in the case at all, and that res judicata effects of settlement or judgment will be different from what they reasonably expected. “[T]he rights of the defendants to be free from costly and harassing litigation must be considered.” The judge wastes half a day in chambers preparing the “short and plain statement” which Rule 8 obligated plaintiffs to submit. He then must manage the litigation without knowing what claims are made against whom. This leads to discovery disputes and lengthy trials, prejudicing litigants in other case who follow the rules, as well as defendants in the case in which the prolix pleading is filed. “[T]he rights of litigants awaiting their turns to have other matters resolved must be considered” While commendable in its consideration for plaintiffs in this case, *the magistrate's thorough analysis and thirty-page report, and the judge's study of the report, took a great deal of time away from more deserving litigants waiting in line.*” (emphasis added) (internal

citations omitted)).

Based on the foregoing, Applicant has not set forth anything the PCR court overlooked or misapprehended. Thus, this motion should be denied without a hearing.

RETURN OPPOSING RULE 60(B) MOTIONS

Applicant has filed motions pursuant to Rule 60(b), SCRPC, reiterating many of the same arguments he raised in his PCR application, at the PCR hearing, and in his motion to reconsider. In his Rule 60(b)(4) motion, he again alleges the State Grand Jury did not meet to indict him, the letter from Court Administration proves the State Grand Jury did not meet to indict him, and as a result the general sessions court lacked jurisdiction over his general sessions trial. He additionally again argues the judge, the prosecutor, and his trial attorney conspired against him; and the judge colluded with the prosecution to suppress the empanelment documents, which he believes were exculpatory. He contends the denial of these documents deprived him of a fair trial. Finally, he reasserts due process violations, including that he did not have notice, that the prosecution usurped the Grand Jury's role, that the prosecution violated Brady and suppressed favorable evidence, and that his indictments were illegal. These allegations, which have already been considered by this Court, do not set forth a basis to set aside this judgment under Rule 60(b)(4). Critically, the general sessions court had jurisdiction over his criminal trial. See Gentry, 363 S.C. at 101, 610 S.E.2d at 499 ("Circuit courts obviously have subject matter jurisdiction to try criminal matters."); Evans v. State, 363 S.C. at 508, 611 S.E.2d at 517 ("The sufficiency of an indictment will no longer be considered an issue of subject matter jurisdiction."). Because the circuit court had jurisdiction over this criminal trial and the remaining claims have been considered by this Court, this motion should be denied without a hearing.

Finally, Applicant has filed a motion pursuant to Rule 60(b)(3) and 60(b)(6) alleging

extrinsic fraud. He again raises issues regarding (1) his allegation that the State suppressed exculpatory evidence (i.e. the empanelment documents), (2) the nondisclosure of empanelment documents, which he asserts constitutes fraudulent concealment, (3) whether he was able to present a fair defense without the empanelment documents, (4) extrinsic fraud that “prevented him from fully trying his case” related to the criminal trial court’s lack of subject matter jurisdiction; (5) whether the trial court induced him not to present his case or deprived him of an opportunity to be heard on the issue of empanelment documents; (6) whether the judge displayed fraudulent misconduct and conscious wrongdoing in her rulings related to the empanelment documents; (7) whether the trial judge committed subornation of perjury when she told him the Grand Jury proceedings are secret; (8) whether the concealing of the empanelment documents constituted fraud upon the court; and (9) whether he “is entitled to Rule60(b)(3)(6) relief for violation of due process of law relating to the infringement of his constitutional right to ‘mount or prepare a defense.’” These are the exact issues that he litigated at the PCR hearing, and a Rule 60(b) motion is not a proper mechanism for retrying these claims. To the extent he has made a prima facie showing of extrinsic fraud, these very issues have already been litigated at the PCR hearing, and Applicant is not entitled to an additional hearing to relitigate the claims he has already litigated. Cf. Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (“Under the doctrine of res judicata, “[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.”). Thus, this motion should be denied without a hearing.

CONCLUSION

Based on the foregoing, Respondent respectfully submits Applicant has not set forth any allegation, fact, or law that the PCR court overlooked or misapprehended, and the motion to

reconsider should be denied without a hearing. Further, as set forth herein, Applicant has not set forth sufficient facts to warrant a hearing on his Rule 60(b) Motions. Specifically, he did not allege extrinsic fraud, the circuit court had jurisdiction over his criminal trial, and Applicant merely seeks to relitigate claims that have already been considered and ruled upon. Thus, the Rule 60(b) motions should also be denied without a hearing.

Respectfully Submitted,

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This 2 day of October, 2025.