UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STEVEN ALAN MAGRITZ,
Petitioner,

v. **Case No. 18-C-0455**

JON E. LITSCHER,
Respondent.

DECISION AND ORDER

On November 28, 2018, the court entered an order and a judgment dismissing a petition for a writ of habeas corpus filed by Steven Alan Magritz under 28 U.S.C. § 2254. On December 20, 2018, Magritz filed a motion for relief from the judgment and order under Federal Rule of Civil Procedure 60(b). I consider that motion below.

Magritz first argues that the order and judgment must be set aside under Rule 60(b)(4) because the respondent committed fraud. The alleged fraud involved misstating the reasoning behind the state court of appeals's denial of Magritz's state habeas petitions. However, the respondent did not misstate the state court's reasoning. Moreover, the state court's opinions are part of the federal record, and any statements I made about the contents of those opinions were based on a review of the opinions rather than on the respondent's representation of the contents of the opinions. Thus, Magritz is not entitled to relief under Rule 60(b)(3).

Next, Magritz argues that the order and judgment must be set aside under Rule 60(b)(6) because I am biased and should have recused myself under 28 U.S.C. § 455(b)(1). Magritz states the following in support of his claim that I am biased:

> In his Decision and Order, Adelman evidenced bias or prejudice by *fabricating* his own false "facts" or "findings", utilizing *known* false statements made in respondent's aforesaid motion to the Court, disregarding or intentionally misapplying *clearly stated* Wisconsin statute and cases, and postulating an incredulous scenario, with which no honest person or jurist could agree, in order to "justify" his "decision" and order.

ECF No. 18 at 2 (emphasis in original). However, my opinion was based on my understanding of the record and the law. Magritz obviously disagrees with my ultimate ruling, but "[j]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994). The proper remedy for disagreement with a judicial ruling is an appeal, not a recusal motion. *Id.* Thus, Magritz is not entitled to relief under Rule 60(b)(6).

Finally, Magritz argues that the order and judgment must be set aside under Rule 60(b)(4) because they are void. But here Magritz merely restates his claims that the judgment was procured by fraud and that I was not fair and impartial. ECF No. 18 at 2–3. As I have already rejected those claims, I also conclude that the order and judgment are not void.

For the reasons stated, **IT IS ORDERED** that the petitioner's motion for relief under Federal Rule of Civil Procedure 60 is **DENIED**.

Dated at Milwaukee, Wisconsin, this 22nd day of February, 2019.

s/Lynn Adelman
LYNN ADELMAN
District Judge