

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

|                  |   |                           |
|------------------|---|---------------------------|
| WALLACE WILKINS, | ) |                           |
|                  | ) |                           |
| Petitioner,      | ) |                           |
|                  | ) |                           |
| vs.              | ) | No. 1:16-cv-00722-TWP-TAB |
|                  | ) |                           |
| WENDY KNIGHT,    | ) |                           |
|                  | ) |                           |
| Respondent.      | ) |                           |

**Order Directing Treatment of  
Motion for 60(b) as New Civil Action**

Wallace Wilkins’ petition for writ of habeas corpus challenging a prison disciplinary proceeding was denied on April 7, 2016. (Filing No. 3). His motion for reconsideration, treated as a motion to alter or amend judgment, was denied on June 1, 2016. (Filing No. 7).

This matter is now before the Court on Motion for 60(b) filed by Petitioner Wallace Wilkins. (Filing No. 8). This motion was filed with the clerk on August 24, 2016, but applying the prison mailbox rule the motion is considered to have been filed on the date it was placed in the mail, August 22, 2016. Based on its timing and its content, this motion is treated as a motion for relief from judgment pursuant to Rule 60(b) of the *Federal Rules of Civil Procedure*. See *Kiswani v. Phoenix Sec. Agency, Inc.*, 584 F.3d 741, 742 43 (7th Cir. 2009).

This treatment leads to another question. “When faced with a Rule 60(b) motion filed in response to the denial of a petition for habeas relief, the district court must first determine whether the motion should be treated as a second or successive habeas petition [or whether] it should be treated as a ‘true’ 60(b) motion.” *Spitznas v. Boone*, 464 F.3d 1213, 1215 (10th Cir. 2006). A motion that “add[s] a new ground for relief” or that “attacks the federal court's previous resolution

of a claim *on the merits*” presents a claim for habeas relief. *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005).

The Rule 60(b) motion for relief from judgment renews Wilkins’ argument that the challenged disciplinary proceeding is constitutionally infirm. *Gonzalez* dictates that such a motion be treated as a new “application” for collateral review.

Based on the foregoing, therefore:

1. The clerk shall **process** the Rule 60(b) motion [dkt 8] **as a new civil action in the Indianapolis Division**. The motion shall be the initial pleading in the newly opened action and shall be re-docketed there as the petition for writ of habeas corpus. A copy of this Entry shall likewise be docketed in the new action.

2. The new action shall have a NOS of 530 and a cause of action of 28:2254(a). In the new action, Wallace Wilkins shall be the petitioner and the Superintendent of the Correctional Industrial Facility shall be the respondent. The assignment of judicial officers in the newly-opened action shall be by random draw.

3. The motion for 60(b) [dkt 8] is **denied** insofar as filed in this action, and this action remains closed.

IT IS SO ORDERED.

Date: 8/29/2016



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TANYA WALTON PRATT, JUDGE  
United States District Court  
Southern District of Indiana

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WALLACE WILKINS  
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