

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
OHIO, WESTERN DIVISION AT DAYTON

Kevin J. Barker v. Norm Robinson, Warden, London Correctional
Institution

Barker · No. 3:19-cv-00067 · Decided March 9, 2026

SUMMARY

In this Report and Recommendations, the magistrate judge recommends denying Kevin J. Barker’s motion under Federal Rule of Civil Procedure 60(b) seeking relief from the judgment in his habeas corpus case. The court concludes that the prior judgment properly treated Barker’s resentencing as a new judgment and that his claims were subject to ordinary procedural defenses, including procedural default and state-law res judicata. The court also recommends denying a certificate of appealability and certifying that any appeal would be objectively frivolous.

CASE DETAILS

COURT	United States District Court for the Southern District of Ohio, Western Division at Dayton
WRITING FOR THE COURT	Michael R. Merz
JURISDICTION	United States District Court for the Southern District of Ohio, Western Division at Dayton
DECIDED	March 9, 2026
DOCKET	3:19-cv-00067
DISPOSITION	other
PROCEDURAL POSTURE	Report and recommendation on Petitioner's pro se Emergency Motion for Relief from Judgment under Federal Rule of Civil Procedure 60(b) (1), (4), and (6) in a federal habeas corpus proceeding.
STANDARD OF REVIEW	Relief under Federal Rule of Civil Procedure 60(b); a Rule 60(b)(1) motion must be filed within one year after entry of judgment. The recommendation also applied the federal habeas limitations and procedural-default framework under 28 U.S.C. § 2254.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Kevin J. Barker v. Norm Robinson, Warden, London Correctional Institution

TOPICS

federal habeas corpus

post-conviction relief

successive petitions

motion for reconsideration

default

PRACTICE AREAS

federal habeas corpus

post-conviction relief

civil procedure

criminal procedure

QUESTIONS PRESENTED

1. Whether Barker's Rule 60(b) motion was actually a second or successive habeas petition requiring authorization under 28 U.S.C. § 2244(b).
2. Whether the prior federal judgment improperly failed to treat Barker's 2016 resentencing as a new judgment and thereby denied him one full merits review.
3. Whether Barker was entitled to relief under Rule 60(b)(1), (4), or (6), including whether the Rule 60(b)(1) request was timely.
4. Whether a certificate of appealability should issue and whether an appeal should be certified as objectively frivolous for purposes of proceeding in forma pauperis.

HOLDINGS

1. The motion was a proper Rule 60(b) motion rather than a second or successive habeas petition because it challenged an alleged defect in the original federal judgment.
2. The fact that a resentencing resulted in a new judgment did not require the State or the federal court to disregard ordinary defenses, including state res judicata and procedural default.
3. Barker was not entitled to relief under any asserted Rule 60(b) provision. His Rule 60(b)(1) request was untimely, and he did not establish that the judgment was void or that any other reason justified relief.

KEY QUOTATIONS

“In other words, review on the merits does not mean the Court must overlook the State’s defenses.” (PageID 259-60)

FACTUAL BACKGROUND

Barker was convicted and sentenced in Ohio state court for prostitution-related offenses and was resentenced in 2016. The state court entered an amended termination entry on February 7, 2017. In the federal habeas proceeding, the court treated the resentencing as producing a new judgment, adjudicated Barker's claims, and dismissed them based on procedural default or deference to the state court under 28 U.S.C. § 2254(d)(1).

PROCEDURAL HISTORY

Barker sought federal habeas relief from an Ohio conviction and sentence for prostitution-related offenses. The magistrate judge previously recommended dismissal of his habeas claims, and District Judge Walter H. Rice adopted that recommendation on September 24, 2019; the district court and Sixth Circuit denied certificates of appealability. Barker then filed the Emergency Motion on March 6, 2026, arguing that the prior judgment

improperly failed to treat his 2016 resentencing as a new judgment and denied him one full merits review. The magistrate judge recommended denying the motion and denying a certificate of appealability.

DISPOSITION

other

CASES CITED

- Gonzalez v. Crosby, 545 U.S. 524, 535 (2005)
- State v. Barker, 2nd Dist. Montgomery No. CA 27472, 2018-Ohio-2044, ¶ 6
- King v. Morgan, 807 F.3d 154, 155-56, 157, 160 (6th Cir. 2015)
- Franklin v. Jenkins, 839 F.3d 465 (6th Cir. 2016)
- Burton v. Stewart, 549 U.S. 147 (2007)
- Magwood v. Patterson, 561 U.S. 320, 342 (2010)
- Crangle v. Kelly, 838 F.3d 673 (6th Cir. 2016)