

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

STEPHEN CARMICHAEL,)	
)	
Petitioner,)	
)	
v.)	CIVIL NO. 04-113-B-W
)	CIVIL NO. 07-123-B-W
WARDEN, MAINE STATE PRISON,)	
)	
Respondent.)	

**ORDER DENYING MOTION FOR RECONSIDERATION AND REQUEST FOR
CERTIFICATE OF APPEALABILITY**

On September 21, 2007, the Court issued an Order denying Stephen Carmichael’s two petitions for writs of habeas corpus. *Order Affirming Recommended Decision and Order on Pet. for Writ of Habeas Corpus* (Docket # 39, case 04-113); (Docket # 3, case 07-123). On October 10, 2007, Mr. Carmichael filed a request for a certificate of appealability and a motion for reconsideration in each case. *Req. for Certificate of Appealability* (Docket # 41, case 04-113); (Docket # 5, case 07-123) (*Req.*). The Court denies the requests.

Regarding the motion for reconsideration, Mr. Carmichael reiterates his earlier position that his confinement is contrary to the Supreme Court’s holding in *Strickland v. Washington*, 466 U.S. 668 (1984). Mr. Carmichael points out that the Maine Supreme Judicial Court concurred that he had received ineffective assistance of counsel regarding the use of his mug shot where there was no issue of identification and regarding evidence of his prior convictions. *Req.* at 3. Citing *State v. Almurshidy*, 1999 ME 97, 732 A.2d 280, he argues that “[t]hese [issues] have been decided / ruled by the First Circuit [sic] to be justification [for vacating] a criminal

conviction.” *Id.* Finally, he claims that the Court’s refusal to order an evidentiary hearing constituted an abuse of discretion. *Id.* at 4.

A motion for reconsideration is an “extraordinary remedy which should be used sparingly.” *Palmer v. Champion Mortgage*, 465 F.3d 24, 30 (1st Cir. 2006) (quoting 11 Charles Alan Wright et al., *Federal Practice and Procedure* § 2810.1 (2d ed. 1995)). To be granted such a remedy, the movant “must demonstrate either that newly discovered evidence (not previously available) has come to light or that the rendering court committed a manifest error of law.” *Palmer*, 465 F.3d at 30. Neither is applicable here. Referencing the Magistrate Judge’s Recommended Decision, the Court addressed each of these same issues in its Order dated September 21, 2007.¹ Mr. Carmichael’s motion for reconsideration simply poses no basis for reconsideration, since it contains no new evidence and no convincing demonstration of a manifest error of law. Regarding Mr. Carmichael’s requests for a certificate of appealability, which are based on the same arguments, the Court has concluded that no substantial question would be presented for decision on appeal and, therefore, it denies his applications for a certificate of appealability. *See* Fed. R. App. P. 22(b).

¹ Mr. Carmichael raised both *Strickland* and *Almurshidy* in his initial filing. *Pet. for Writ of Habeas Corpus*, Doc. 1-3 at 1, 5 (Docket # 1, case 04-113). In his July 13, 2003, decision, Justice Jabar of the Maine Superior Court found that the trial attorney’s performance:

[D]id fall below that from which a client may expect from an ordinary fallible attorney in two areas. The first area has to do with ground four wherein the trial attorney failed to keep the mugshot out of evidence or any alternative sanitizing of the photo lineup. The other area wherein this court finds that the trial attorney’s conduct fell below the performance of an ordinary fallible attorney . . . is when he did not request either a limiting instruction during the trial or an instruction at the end of trial regarding the limited use of prior convictions.

Carmichael v. State, SOMSC-CR-00-296 (Me. Super. Ct., Som. Cty., July 17, 2003) (Jabar, J.), *Decision* at 13. Justice Jabar concluded, however, based on other evidence in the trial, that “the deficiencies referred to above did not affect the outcome of the trial.” *Id.* at 16. The Maine Supreme Judicial Court denied Mr. Carmichael’s request for a certificate of probable cause and entered its denial on the docket on May 19, 2004.

In her decision, which this Court accepted, the Magistrate Judge concluded that Mr. Carmichael had not provided clear and convincing evidence that any of Justice Jabar’s factual findings were inaccurate and she found evidentiary support for each of his factual findings. *Recommended Decision* at 12 (Docket # 25). She also concluded that Justice Jabar applied the correct standard to the question of whether trial counsel’s deficiencies violated the second prong of *Strickland*. *Id.* at 12-14. This Court has, therefore, already addressed Mr. Carmichael’s *Strickland* contention and his argument for reconsideration raises no new evidence or issues.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 30th day of October, 2007

Petitioner

STEPHEN CARMICHAEL

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Respondent

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