

Esq., ("Capone"), failed to advise Phillips of his right to plead guilty without a plea agreement.¹

The Third Circuit remanded the matter to this Court, which held an evidentiary hearing in which Phillips and Capone both testified. Subsequently, Phillips filed a Motion to Expand the Record by which he sought to enter an affidavit into the record of this case and present a new and unique explanation of the events preceding his arrest. The Court found as a fact that Capone informed Phillips that he could plead guilty to the indictment.

Federal Rule of Civil Procedure 59(e) and Local Civil Rule 7.1(g) of the United States District Court for the Eastern District of Pennsylvania allow parties to file motions for reconsideration or amendment of a judgment. Courts should grant these motions sparingly, reserving them for instances when: (1) there has been an intervening change in controlling law; (2) new evidence has become available; or (3) there is a need to prevent manifest injustice or correct a clear error of law or fact. See, e.g., General Instrument Corp. v. Nu-Tek Electronics, 3 F. Supp. 2d 602, 606 (E.D. Pa. 1998), aff'd, 197 F.3d 83 (3d Cir. 1999); Environ Prods., Inc. v. Total Containment, Inc., 951 F. Supp. 57, 62 n.1 (E.D. Pa. 1996). Dissatisfaction with the Court's ruling

¹ Phillips was convicted by a jury of the single count of an indictment charging him with importing a controlled substance in a secret crevice of his luggage.

is not a proper basis for reconsideration. Burger King Corp. v. New England Hood and Duct Cleaning Co., No. 98-3610, 2000 WL 133756 at *2 (E.D. Pa. Feb. 4, 2000).

Phillips has only challenged factual determinations made by the Court and has attempted to go beyond the Certificate of Appealability issued by the Third Circuit. The sole issue before the Court is whether Capone advised Phillips that he could plead guilty without a plea agreement. The Court concluded he had. Whether Phillips asked Capone to explore a plea agreement is not relevant. The Court rejected Phillips's contentions that Capone advised him that he could only plead guilty if he cooperated with the government and that he had to go to trial, as well as the story presented for the first time in Phillips's affidavit. While Phillips would prefer if the Court believed him rather than Capone, the Court found Capone's testimony more credible than Phillips's testimony and subsequent contradictory affidavit. Ultimately, Phillips merely has a difference of opinion with the Court, which is not an appropriate ground upon which to grant a motion for reconsideration.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CIVIL ACTION
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PETER A. PHILLIPS : NO. 97-6475
 : (93-cr-513)

ORDER

AND NOW, this day of May, 2001, upon consideration
of the Motion for Reconsideration of Petitioner, Peter A.
Phillips ("Phillips"), the government's Response and Phillips's
Reply thereto, it is ORDERED that the Motion for Reconsideration
is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.