

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

ALLEN STRATTON

v.

UNITED STATES OF AMERICA

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CIVIL ACTION

NO. 05-6057

**Memorandum and Order**

YOHN, J.

February \_\_\_\_, 2006

Presently before the court is defendant Allen Stratton's Motion for Relief from Judgment and/or Independent Action, in which Stratton argues that he should be relieved from this court's December 5, 2003 denial of his 28 U.S.C. § 2255 motion and its June 3, 2004 denial of his Motion to Make Additional Findings of Fact. Stratton argues that the recent Supreme Court decisions in *Johnson v. United States*, 125 S. Ct. 1571 (2005), and *Dodd v. United States*, 125 S. Ct. 2478 (2005), contradict this court's previous decisions and compel a ruling that his counsel was constitutionally ineffective for failing to initiate state proceedings to vacate the state convictions that served as predicates for the career offender sentencing enhancement that this court applied pursuant to the United States Sentencing Guidelines. However, because Stratton fails to show both that the court's prior decisions were the result of fraud, mistake, or accident and that denying him relief would result in a grave miscarriage of justice, he is not entitled to relief in an independent action. Accordingly, the court will deny his claim.

On November 16, 1999, Stratton was found guilty of possession with intent to distribute and distribution of crack cocaine. In accordance with the career offender provisions set forth in United States Sentencing Guidelines § 4B1.1, this court sentenced Stratton to 240 months imprisonment based upon his two prior felony convictions, the first for aggravated assault, in 1993, and the second for possession with intent to deliver crack cocaine, in 1996. Stratton filed a timely appeal, and the Third Circuit affirmed on May 29, 2002.

Stratton then filed a motion to have his sentence vacated, set aside, or corrected pursuant to 28 U.S.C. § 2255 on September 16, 2002. He argued that because he received a five-year probationary sentence for his 1996 drug offense, rather than a sentence of actual imprisonment, the court erred in designating him a career offender. He also argued that his attorneys were constitutionally ineffective for failing to raise that point during sentencing and on appeal. On December 5, 2003, I ruled that his 1996 conviction, despite not resulting in a sentence of imprisonment, still constituted a felony for purposes of U.S.S.G. § 4B1.1, and therefore denied his motion.

Stratton then filed a “Motion to Make Additional Findings of Fact,” under Federal Rules of Civil Procedure Rules 52(b) and 59(e) on December 22, 2003. He argued that his 1996 conviction was unconstitutionally obtained by way of an unintelligent and unknowing guilty plea. He also argued that his attorney at sentencing was ineffective for failing to fully investigate the circumstances of his two previous state felony convictions. Finally, he argued that his trial counsel in the 1996 proceeding was ineffective for failing to explain to defendant, before he entered his plea, the doctrine of lesser-included offenses. On June 3, 2004 I denied his claims, ruling that: 1) alleged errors in state court proceedings cannot be raised in a challenge to the

sentencing phase of an altogether separate trial in federal court; 2) Stratton suffered no prejudice due to his attorney's failure to investigate the underlying convictions because he was already time-barred from filing for post-conviction relief in state court; and 3) that his argument about lesser-included offenses was based on a misunderstanding of Pennsylvania law. On June 28, 2004 Stratton appealed the court's denials of his § 2255 motion and his Motion to Make Additional Findings of Fact, and on January 4, 2005 the Third Circuit denied Stratton a certificate of appealability.

Stratton now claims that the law that governed this court's 2003 and 2004 decisions has been changed by the subsequent Supreme Court decisions in *Johnson v. United States*, 125 S. Ct. 1571 (2005), and *Dodd v. United States*, 125 S. Ct. 2478 (2005). In *Johnson*, decided April 4, 2005, the Supreme Court held that in order for a prisoner, who seeks to collaterally attack a federal sentence on the ground that a state conviction used to enhance that sentence has since been vacated, to comply with § 2255's one-year limitation period, the prisoner must: 1) seek to have the state conviction vacated with due diligence in state court after entry of judgment in the federal case with the enhanced sentence, and 2) file the 28 U.S.C. § 2255 motion within one year of the date on which he received notice of the order vacating the prior conviction. In *Dodd*, decided June 20, 2005, the Supreme Court held that the one-year limitation period for filing a 28 U.S.C. § 2255 motion based on a right that was newly recognized by the Supreme Court begins to run from the date on which the Supreme Court initially recognized the right asserted, not from the date on which the right asserted was made retroactively applicable. Stratton extrapolates from these cases that his counsel "had a duty prior to sentencing and at sentencing to initiate proceedings in state court regarding an invalid state conviction used in a federal sentencing

proceeding,” and argues that because his counsel failed to initiate such a proceeding, he was constitutionally ineffective. Stratton seeks relief through an independent action.<sup>1</sup>

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<sup>1</sup> Stratton’s action is titled “Motion for Relief from Judgment and/or Independent Action.” Insofar as Stratton seeks relief pursuant to Rule 60(b), his claim is barred as an unauthorized successive habeas motion. In *Gonzalez v. Crosby*, 125 S. Ct. 2641 (2005), the Supreme Court considered the extent to which Rule 60(b) motions are governed by the procedural requirements of The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”). In *Gonzalez*, the petitioner filed a Rule 60(b)(6) motion alleging that the district court’s previous ruling that his 28 U.S.C. § 2254 petition was barred by AEDPA’s statute of limitations was at odds with a subsequently-decided Supreme Court case. *Id.* at 2645. The district court denied the petitioner’s motion, and the Eleventh Circuit affirmed, ruling that the motion was in substance an unauthorized second or successive habeas petition. *Id.* In considering the relationship between Rule 60(b) and AEDPA, the Supreme Court explained that “Rule 60(b), like the rest of the Rules of Civil Procedure, applies in habeas corpus proceedings under 28 U.S.C. § 2254 only ‘to the extent that [it is] not inconsistent with’ applicable federal statutory provisions and rules.” *Id.* at 2646 (internal footnote omitted) (citing 28 U.S.C. § 2254 Rule 11). The Court then concluded that it would be inconsistent with AEDPA to allow a petitioner to use a Rule 60(b) motion to present certain “claims” that are traditionally included in a § 2254 petition without subjecting the 60(b) motion to the gatekeeping features of AEDPA. *Id.* at 2647. The Court ruled that a petitioner’s 60(b) motion presents a “claim” that requires it to be treated as a habeas petition when it either attempts to “add a new ground for relief,” or attempts to “attack the federal court’s previous resolution of a claim *on the merits*.” *Id.* at 2648 (emphasis in original). On the other hand, a challenge will not present such a “claim” if it alleges a “defect in the integrity of the federal habeas proceedings,” *id.* at 2648, or contests a ruling that precluded a merits determination, i.e. a denial for reasons such as failure to exhaust, procedural default, or a statute-of-limitations bar, *id.* at 2648 n.4. Here, Stratton challenges this court’s previous decision, in which I denied his ineffective assistance of counsel claim on the merits; he argues that due to a subsequent change in law, the court’s previous decision “is demonstrably wrong.” Stratton’s motion therefore presents a “claim” that must conform to AEDPA’s procedural requirements. Because Stratton has failed to file for the requisite authorization in the court of appeals to present a second or successive § 2255 motion, to the extent that he seeks relief in a Rule 60(b) motion, the motion will be dismissed.

While an independent action is an equitable remedy, rather than one governed by the Federal Rules of Civil Procedure, some courts have held that an independent action should be subject to the same rules as a Rule 60(b) motion. See *Gonzalez v. Sec’y for Dept. of Corrs.*, 366 F.3d 1253, 1277 n.11 (11th Cir. 2004) (stating that “[a]ll of the reasoning and all of the principles [concerning Rule 60(b) motions] we have been discussing apply fully to any independent action designed to set aside or reopen a judgment denying federal habeas relief”); *United States v. Swint*, 2005 WL 2811749 (E.D. Pa. Oct. 25, 2005). If that is the case, then Stratton’s independent action is barred as an unauthorized successive habeas motion for the same reasons described above. However, in order to be cautious and to emphasize the extreme rarity with

An independent action is an equitable remedy reserved to the courts by the savings clause of Rule 60(b).<sup>2</sup> “Rule 60(b) merely reserves whatever power federal courts had prior to the adoption of Rule 60 to relieve a party of a judgment by means of an independent action according to traditional principles of equity.” 12 James Wm. Moore et al., *Moore's Federal Practice*, § 60.80 (3d ed. 2005).

The Third Circuit has stated that:

The indispensable elements of [an independent action] cause of action are (1) a judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; and (5) the absence of any adequate remedy at law.

*In re Machne Israel, Inc.*, 48 Fed. Appx. 859, 863 n.2 (3d Cir. 2002) (quoting *Nat'l Sur. Co. of N.Y. v. State Bank of Humboldt*, 120 F. 593, 599 (8th Cir. 1903)). Additionally, independent actions are reserved for extraordinary circumstance, and will be granted “only to prevent a grave miscarriage of justice.” *United States v. Beggerly*, 524 U.S. 38, 47 (1998). The Supreme Court has explained that such a grave miscarriage of justice occurred in *Marshall v. Holmes*, 141 U.S. 589 (1891), “in which the plaintiff alleged that judgment had been taken against her in the underlying action as a result of a forged document.” *Beggerly*, 524 U.S. at 47.

Here, Stratton has presented no evidence that this court’s prior judgment was tainted by

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which relief will be granted in an independent action, the court will proceed as if this action is not barred by AEDPA.

<sup>2</sup> The provision of Rule 60(b) commonly known as the “savings clause” states: “This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court.”

fraud, accident, or mistake, making an independent action an inappropriate vehicle in which to bring this challenge. Stratton has also failed to show that there will be a grave miscarriage of justice if he is not relieved from the judgment. He is merely seeking relief based on what he perceives to be a change of law that occurred after this court denied his prior filings. This is not an unusual situation; as the Supreme Court has explained, “[i]t is hardly extraordinary that subsequently, after petitioner's case was no longer pending, this Court arrived at a different interpretation” of a statute. *Crosby*, 125 S. Ct. at 2650. Stratton has not shown a degree of injustice similar to the plaintiff in *Marshall v. Holmes*, where, according to averments, “the judgments in question would not have been rendered against Mrs. Marshall but for the use in evidence of the letter alleged to be forged.”<sup>3</sup> *Beggerly*, 524 U.S. at 47. Thus, because Stratton’s claim neither shows that this court’s judgment was affected by fraud, mistake, or accident nor shows that denying him relief would result in a grave miscarriage of justice, I find that he cannot obtain relief through an independent action.<sup>4</sup> Accordingly, his claim will be denied.

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<sup>3</sup> In a case where a party fails to present evidence of fraud, accident, or mistake, and simply seeks relief that would be otherwise obtainable under § 2255, the party cannot show a grave miscarriage of justice. For example, in this case, Stratton seeks relief based on a change of law. Section 2255 provides for such a situation, allowing federal prisoners to apply for relief within one year of “the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review.” 28 U.S.C. § 2255 ¶ 6(3). Stratton is essentially asking this court to conclude that there will be a grave miscarriage of justice if his remedies are limited by AEDPA’s procedural requirements. This proposition, at least without a showing of fraud, accident, or mistake, is inconsistent with the detailed, carefully-calibrated structure of AEDPA, and there will be no grave miscarriage of justice if Stratton is forced to abide by AEDPA’s strictures.

<sup>4</sup> The court also notes that an individual seeking to bring an independent action should be responsible for paying an additional filing fee pursuant to 28 U.S.C. § 1914(a). Section 1914(a) states “The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of

An appropriate order follows.

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\$250, except that on application for a writ of habeas corpus the filing fee shall be \$5.” Because an independent action requires its own jurisdictional basis, *Moore’s Federal Practice* at § 60.84[1][a], ““may be brought by one who was not a party to the original action,”” *In re Machne Israel, Inc.*, 48 Fed. Appx. at 863 (quoting *Morrel v. Nationwide Mut. Fire Ins. Co.*, 188 F.3d 218, 222 (4th Cir. 1999)), and “may be brought in any court of competent jurisdiction,” Charles Alan Wright et al., *Federal Practice and Procedure* § 2868 (2d ed. 1995); Fed. R. Civ. P. 60 Advisory Committee Notes to the 1946 Amendment, the court concludes that an individual commencing an independent action is effectively “instituting [a] civil action,” and accordingly, should be subject to § 1914's filing fee.

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**Order**

Yohn, J.

AND NOW, this \_\_\_\_ day of February, 2006, upon consideration of defendant Allen Stratton's Motion for Relief from Judgment and/or Independent Action (Doc. No. 1), IT IS HEREBY ORDERED that the defendant's motion is DENIED and DISMISSED.

\s William H. Yohn, Jr., Judge

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William H. Yohn, Jr., Judge