

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

JUNIOR THOMPSON	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 05 - 6779
v.	:	
	:	
JAMES WYDNER	:	
	:	
Defendant.	:	
	:	

DuBOIS, J.

JUNE 7, 2006

MEMORANDUM

**I. INTRODUCTION**

Presently before the Court is Petitioner’s Petition/Motion Pursuant to Federal Rules of Civil Procedure 60(b)(3)(4) and (6) (hereinafter “Rule 60(b) Motion”). By Order dated December 24, 1997, the Court (Waldman, J.) denied petitioner’s habeas corpus motion under 28 U.S.C. § 2254. On May 26, 1998, the Court of Appeals for the Third Circuit denied petitioner’s application for a certificate of appealability.

The Court must now decide whether the pending Rule 60(b) Motion constitutes a second or successive habeas motion. If it is a successive habeas motion, petitioner must obtain an order from the Court of Appeals authorizing this Court to consider the Motion.

For the reasons set forth below, the Court concludes that petitioner’s Rule 60(b) Motion must be construed as a successive habeas motion. Because petitioner has not obtained an order

from the Court of Appeals authorizing this Court to consider the Rule 60(b) Motion, this action is transferred to the Court of Appeals pursuant to 28 U.S.C. § 1631 for a decision on the question whether to authorize this Court to consider the claims as a successive habeas petition.

## **II. BACKGROUND**

A detailed factual and procedural history is included in previously reported opinions in this case. See, e.g., Thompson v. Wydner, 2005 U.S. Dist. Lexis 26236 (E.D. Pa. Nov. 5, 2005); Commonwealth v. Thompson, 674 A.2d 217 (Pa. 1996). For purposes of considering the pending Rule 60(b) Motion, the Court notes the key fact that the Court denied petitioner's federal habeas corpus motion under 28 U.S.C. § 2254 by Order dated December 24, 1997.

## **III. DISCUSSION**

### **A. Petitioner's Rule 60(b) Motion**

Petitioner seeks relief under Federal Rule of Civil Procedure 60(b), sections (3), (4), and (6). Petitioner claims in the Motion that the state court issued faulty jury instructions on accomplice liability, which relieved the Commonwealth of its burden of proving every element of the offense. Petitioner further argues that the faulty jury instructions deprived him of due process of law.

### **B. Standard for Motions Under Rule 60(b)(3)(4) & (6)**

Rule 60(b) allows a party to seek relief from a final judgment under a limited set of circumstances, including fraud, mistake, and newly discovered evidence. See Fed. R. Civ. P. Rule 60(b).<sup>1</sup> The general purpose of the Rule is "to strike a proper balance between the

---

<sup>1</sup> Rule 60(b) provides that on motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered

conflicting principles that litigation must be brought to an end and that justice must be done.”

Boughner v. Secretary of Health, Education and Welfare, 572 F.2d 976, 977 (3d Cir. 1978).

“The decision to grant or deny relief pursuant to Rule 60(b) lies in the ‘sound discretion of the trial court guided by accepted legal principles applied in light of all the relevant circumstances.’”

United States v. Hernandez, 158 F. Supp. 2d 388, 392 (D. Del. 2001) (quoting Ross v. Meagan, 638 F.2d 646, 648 (3d Cir. 1981)).

To reopen a judgment under Rule 60(b)(3), a plaintiff must show “(1) that the adverse party engaged in fraud or other misconduct, and (2) that this conduct prevented the moving party from fully and fairly presenting his case.” Stridiron v. Stridiron, 698 F.2d 204, 207 (3d Cir. 1983). Such fraud must be demonstrated by “clear and convincing” evidence.” Brown v. Pennsylvania R.R. Co., 282 F.2d 522, 527 (3d Cir. 1960). A motion under Rule 60(b)(3) must be made within one year after the judgment, order, or proceeding was entered. Fed. R. Civ. P. 60(b).

To prevail on a Rule 60(b)(4) motion, a plaintiff must show that “the judgment is void.” Fed. R. Civ. P. 60(b)(4). A judgment is void and subject to relief under Rule 60(b)(4) only if the court that rendered it lacked jurisdiction to do so, or entered a decree that was beyond the court’s power to render. Marshall v. Board of Educ., 575 F.2d 417, 422 (3d Cir. 1978). A judgment is not void and not within the purview of Rule 60(b)(4) simply because it is erroneous or based upon precedent later deemed incorrect or unconstitutional. Id. A motion under Rule 60(b)(4)

---

evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgement is void; (5) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

must be made within a “reasonable time” after the judgment, order, or proceeding was entered. Fed. R. Civ. P. 60(b).

Rule 60(b)(6) “vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.” Klapport v. United States, 335 U.S. 601, 614-615 (1949); see also Coltec Industries, Inc. v. Hobgood, 280 F.3d 262, 273 (3d Cir. 2002) (describing Rule 60(b)(6) as a “catch-all”). Changes in decisional law generally do not support relief under Rule 60(b)(6). See Agostini v. Felton, 521 U.S. 203, 239 (1997) (observing that “intervening developments in the law by themselves rarely constitute the extraordinary circumstances required for relief under Rule 60(b)(6)”). However, Rule 60(b)(6) relief may be, but is not necessarily, appropriate where there is a “a supervening change in governing law that calls into serious question the correctness of the court’s judgment.” United States v. Enigwe, 320 F. Supp. 2d 301, 308 (E.D. Pa. 2004) (citation omitted). This motion must be made within a “reasonable time” after the judgment, order, or proceeding was entered. Fed. R. Civ. P. 60(b).

Petitioner filed his Rule 60(b) Motion approximately fifteen years after his conviction by a jury, and approximately eight years after the denial of his habeas corpus motion under 28 U.S.C. § 2254. Because of the Court’s disposition of the action, it need not address the timeliness issue.

C. Applicability of the AEDPA Limitation on Second or Successive Habeas Petitions to a Motion Filed Under Federal Rule of Civil Procedure 60(b)

Before reaching the merits of petitioner’s Rule 60(b) Motion, the Court must determine whether petitioner’s Rule 60(b) Motion is, in essence, a second or successive 28 U.S.C. § 2254 habeas motion. Such a ruling is necessary because the Anti-Terrorism and Effective Death

Penalty Act (AEDPA) limits a petitioner's ability to bring a second or successive habeas motion. Before filing a second or successive § 2254 habeas motion, a petitioner must obtain an order from the appropriate court of appeals authorizing the district court to consider the motion. See 28 U.S.C. § 2244(b)(3)(A).<sup>2</sup>

The Supreme Court and the Court of Appeals for the Third Circuit have ruled that a Rule 60(b) motion to vacate a judgment denying a habeas corpus motion under 28 U.S.C. § 2254 is construed as a second or successive habeas petition where the 60(b) motion seeks to challenge the underlying state conviction. See Gonzalez v. Crosby, 125 S.Ct. 2641 (June 23, 2005); Pridgen v. Shannon, 380 F.3d 721 (3d Cir. 2004). This Court examines these cases to determine their applicability to the instant motion.

At issue in Gonzalez v. Crosby was whether the petitioner could challenge the district court's prior ruling on the AEDPA statute of limitations through a Rule 60(b) motion after the federal courts had denied the petitioner habeas corpus relief from his state conviction under 28 U.S.C. § 2254. 125 S.Ct. at 2644-45. The Supreme Court concluded that the petitioner's Rule 60(b) motion was not the equivalent of a successive habeas petition because the motion attacked a defect in the integrity of the federal habeas proceedings, not the underlying state conviction. Id. at 2648. As a result, the Court held that the district court could rule on the Rule 60(b) motion without prior authorization by the court of appeals. Id. at 2651. However, the Court cautioned

---

<sup>2</sup>Section 2244(b)(3)(A) of the AEDPA provides in pertinent part: "Before a second or successive application . . . is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."

that “[u]sing Rule 60(b) to present new claims for relief from a state court’s judgment of conviction – even claims couched in the language of a true Rule 60(b) motion – circumvents AEDPA’s requirement that a new claim be dismissed unless it relies on either a new rule of constitutional law or newly discovered facts.” Id. at 2647 (citing § 2244(b)(2)).

The Gonzalez decision is consistent with the Third Circuit decision in Pridgen v. Shannon, 380 F.3d 721 (3d Cir. 2004). In Pridgen, the Court noted that, by enacting AEDPA, Congress intended to limit the ability of a prisoner to file “an endless stream of habeas petition,” and held that “when the Rule 60(b) motion seeks to collaterally attack the petitioner’s underlying conviction, the motion should be treated as a successive habeas petition.” Id. at 727.

The Court concludes that, under Gonzalez and Pridgen, petitioner’s Rule 60(b) Motion must be construed as a second or successive habeas corpus motion. By alleging a due process violation and arguing that the state court issued faulty instructions on accomplice liability, the petitioner collaterally attacks his underlying state conviction. Although petitioner may have styled his motion as a Rule 60(b) Motion to avoid the substantive gatekeeping provisions governing second or successive § 2254 habeas petitions, the petitioner’s collateral attack is precisely what the AEDPA sought to limit. As such, petitioner is required to file an application with the Court of Appeals seeking authorization for this Court to consider the Rule 60(b) Motion. See 28 U.S.C. § 2244(b)(3). Because the petitioner has failed to do so, this Court is precluded from reaching the merits of petitioner’s claims.

C. Transfer to the Third Circuit Court of Appeals

Under the circumstances presented, this Court must either dismiss petitioner’s Rule 60(b) Motion as an unauthorized successive habeas petition, see Nunez v. United States, 96 F.3d 990,

991 (7th Cir. 1996); Peterson v. Brennan, 2004 U.S. Dist. Lexis 11860, \*36 (E.D.Pa. 2004), or transfer the claim to the appropriate court of appeals pursuant to 28 U.S.C. § 1631 (2005),<sup>3</sup> see Coleman v. United States, 106 F.3d 339, 341 (10th Cir. 1997); Peterson, 2004 U.S. Dist. Lexis at \*36. To avoid further delay, the Court chooses the latter approach and orders petitioner's Rule 60(b) Motion transferred to the United States Court of Appeals for the Third Circuit. The Court of Appeals must decide whether to authorize this Court to consider the Rule 60(b) Motion as a successive habeas petition.

#### **IV. CONCLUSION**

For the foregoing reasons, the Court does not reach the merits of Petitioner's Petition/Motion Pursuant to Federal Rules of Civil Procedure 60(b)(3)(4) and (6). The Court transfers that Motion to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. § 1631 for a decision on the question whether to authorize this Court to consider it as a successive habeas petition.

An appropriate Order follows.

---

<sup>3</sup>28 U.S.C. § 1631 (2005) provides in pertinent part:

Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

