

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

UNITED STATES OF AMERICA,	:	
	:	CRIMINAL ACTION
Plaintiff,	:	NO. 94-276
	:	
v.	:	
	:	
NATHANIEL SWINT	:	
	:	
Defendant.	:	

ORDER AND MEMORANDUM

ORDER

AND NOW, this 23rd day of June, 2006, upon consideration of Nathaniel Swint’s pro se “Independent Action Via Rule 60(b) of the Federal Rules of Civil Procedure’s Savings Clause For Relief From the July 17, 2000 Memorandum & Order To Allow for a Post-Judgment Motion For Modification From Supervening Events Entitling Movant to a Cause of Action Inherently Unknowable Until Now. In addition, Movant Seeks An Evidentiary Hearing In Regard To This Motion To Reveal The Denial of Procedural Due Process Deriving From 28 U.S.C. § 2072(a)” (Document No. 318, filed June 21, 2006), **IT IS ORDERED**, for the reasons set forth in the attached Memorandum, as follows:

1. The “Independent Action Via Rule 60(b) of the Federal Rules of Civil Procedure’s Savings Clause For Relief From the July 17, 2000 Memorandum & Order To Allow for a Post-Judgment Motion For Modification From Supervening Events Entitling Movant to a Cause of Action Inherently Unknowable Until Now.

In addition, Movant Seeks An Evidentiary Hearing In Regard To This Motion To Reveal The Denial of Procedural Due Process Deriving From 28 U.S.C.

§ 2072(a)” (Document No. 318, filed June 21, 2006) is **DENIED**.

2. Swint’s request for an evidentiary hearing is **DENIED**.

IT IS FURTHER ORDERED that a certificate of appealability will not issue with respect to this motion because the petitioner has not made a substantial showing of a denial of a constitutional right as required by 28 U.S.C. § 2253(c).

MEMORANDUM

The Court issued a Memorandum and Order dated June 23, 2006 in which it decided seven motions filed by defendant Nathaniel Swint. The instant motion, although filed on June 21, 2006, was not received in Chambers until after the Memorandum and Order dated June 23, 2006 was issued.

In the instant motion, Swint seeks modification of the Court’s Memorandum and Order dated July 17, 2000 on the ground that the Court misapplied the constitutional standard for ineffective assistance of counsel, as set forth in Strickland v. Washington, 466 U.S. 669 (1984). In support of his claim, Swint relies on the Supreme Court’s recent decision in Rompilla v. Beard, 125 S. Ct. 2456 (2005). Swint further requests an evidentiary hearing on the alleged constitutional violations that he suffered.

In Rompilla v. Beard, a state inmate facing the death penalty sought a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on grounds of, inter alia, ineffective assistance of counsel. The Supreme Court held that “even when a capital defendant’s family members and the defendant himself have suggested that no mitigating evidence is available, his lawyer is bound to make reasonable efforts to obtain and review material that counsel knows the prosecution will

probably rely on as evidence of aggravation at the sentencing phase of trial.” Id. at 2460. In ruling that Rompilla’s counsel was ineffective, the Court applied the test formulated in Strickland v. Washington: “Ineffective assistance under Strickland is deficient performance by counsel resulting in prejudice” Rompilla, 125 S. Ct. at 2462 (citing Strickland, 466 U.S. at 687).

The Court concludes that Rompilla is completely irrelevant to this case. This case has nothing whatsoever to do with ineffectiveness of counsel for failing to investigate mitigating or aggravating evidence in preparation for the sentencing phase of a capital trial. Moreover, although the Rompilla Court relied on Strickland, it did not reformulate the Strickland standard in any way that would impact on this Court’s Memorandum and Order dated July 17, 2000. For these reasons, Swint’s motion is denied. In addition, because Swint offers no plausible reason in support of his request for an evidentiary hearing, that request is denied.

In the Third Circuit, a certificate of appealability is granted only if the petitioner makes: “(1) a credible showing that the district court’s procedural ruling was incorrect; and (2) a substantial showing that the underlying habeas petition alleges a deprivation of constitutional rights.” Morris v. Horn, 187 F.3d 333, 340 (3d Cir. 1999); see also 28 U.S.C. § 2253(c). The Court concludes that Swint has not made such a showing, and therefore, the Court will not issue a certificate of appealability with respect to this motion.

BY THE COURT:

JAN E. DuBOIS, J.

/s/ **JAN E. DuBOIS, J.**