

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

UNITED STATES OF AMERICA,	:	CR NO. 92-257
	:	
v.	:	
	:	
IFEDOO NOBLE ENIGWE	:	CA NO. 08-797
	:	
	:	

DuBOIS, J.

March 6, 2008

MEMORANDUM AND ORDER

MEMORANDUM

I. INTRODUCTION

Presently before the Court is defendant Ifedoo Noble Enigwe’s *pro se* Motion to Vacate [sic] Judgment of Section 2255 Motion Entered on July 17, 1997, Pursuant to Rule 60(B)(6) (“Motion to Vacate”) (Doc. No. 463, filed September 7, 2007 in CR No. 92-257) and defendant’s *pro se* Petition for Relief Pursuant to the Writ of Audita Querela (“Petition for Relief”) (Doc. No. 1, filed February 19, 2008 in CA No. 08-797). For the reasons set forth below, defendant’s Motion to Vacate and Petition for Relief are denied.

II. BACKGROUND

The Court sets forth only an abbreviated procedural history as pertinent to the pending Motion and Petition. A detailed factual and procedural history is included in the Court’s previously reported opinions in this case. See United States v. Enigwe, 2003 WL 151385, at *2-6 (E.D. Pa. Jan, 14, 2003) (history of habeas proceedings); United States v. Enigwe, 212 F. Supp. 2d 420 (E.D. Pa. 2002); United States v. Enigwe, 2001 WL 708903, at *1-3 (E.D. Pa. June 21,

2001) (post-conviction procedural history); United States v. Enigwe, 1992 WL 382325, at *2-3 (E.D. Pa. Dec. 9, 1992) (factual history).

On May 6, 1992, defendant Ifedoo Noble Enigwe was charged in a four-count indictment with importing and trafficking in heroin. He was convicted by a jury on all four counts on August 12, 1992, and, on August 13, 1993, this Court sentenced him to, *inter alia*, 235 months imprisonment and five years of supervised release. Defendant's conviction and sentence were affirmed by the United States Court of Appeals for the Third Circuit in an unpublished decision on April 28, 1994. United States v. Enigwe, 26 F.3d 124 (3d Cir. 1994) (unpublished table decision), cert. denied, 513 U.S. 950 (1994) (No. 94-5720).

On August 24, 1994, defendant filed a *pro se* Motion pursuant to 28 U.S.C. § 2255 seeking to vacate his sentence. After an evidentiary hearing, at which defendant appeared *pro se*, his Motion was denied by Order dated September 11, 1995. See United States v. Enigwe, 1995 WL 549110 (E.D. Pa. Sept. 11, 1995). Defendant's Motion for Reconsideration was denied on March 1, 1996. See United States v. Enigwe, 1996 WL 92076 (E.D. Pa. Mar. 1, 1996). On appeal, by Order dated July 23, 1996, the Third Circuit vacated the denial of defendant's § 2255 Motion and remanded the case to this Court for appointment of counsel and further proceedings. United States v. Enigwe, 92 F.3d 1173 (3d Cir. 1996) (unpublished table decision). On remand, this Court appointed counsel for defendant and conducted a second evidentiary hearing. Thereafter, defendant's § 2255 Motion was again denied; that ruling was subsequently affirmed by the Third Circuit. See United States v. Enigwe, 1997 WL 430993 (E.D. Pa. July 16, 1997), aff'd 141 F.3d 1155 (3d Cir. 1998) (unpublished table decision). Defendant's petition to the United States Supreme Court for a writ of certiorari was denied. See Enigwe v. United States,

523 U.S. 1102 (1998) (No. 97-8516). Thereafter, defendant filed numerous additional habeas motions and related motions which will be discussed in this Memorandum only to the extent necessary to explain the Court's ruling on the pending motion and petition.

III. DISCUSSION

A. Motion to Vacate Judgment of Section 2255 Motion Entered on July 17, 1997 Pursuant to Rule 60(b)(6) ("Motion to Vacate")

In his Motion to Vacate, defendant argues that Christopher D. Warren, Esq. ("Warren") committed fraud on the court by presenting himself as counsel for defendant in connection with defendant's § 2255 motion on remand. Defendant bases this argument on his belief that the Court appointed William A. DeStefano, Esq. ("DeStefano"), and not Warren, as counsel for this purpose. Mot. at 1-2. Defendant asserts that Warren improperly "impos[ed] himself into the case" and committed fraud by making both the Court and defendant "believe that he was legally approved to represent this defendant on remand from the Third Circuit Court of Appeals for the second evidentiary hearing on defendant's section 2255 proceeding." *Id.* at 2-3.

In making his claim that Warren was never appointed as counsel, defendant relies primarily on two docket entries: (1) Entry # 174, October 30, 1996, for an "Order dated 10/30/96 that the Warden of FCI Allenwood and the United States Marshals for the EDPA produce before this Court the body of Ifedoo Noble Enigwe on 11/14/96 at 10:00 a.m. in the U.S. Marshal's holding cell for a meeting with his attorney, William A. DeStefano, Esq., etc." and (2) Entry # 213, September 18, 1997, for the filing of a CJA 20 to pay appointed counsel, William DeStefano, Esq." Mot. at 1-2; Docket No. 00257.

Defendant further alleges that Warren's "fraud" "tainted" the § 2255 proceedings because

Warren refused “to advance a claim defendant believed would have completely exonerated [sic] him.” Mot. at 2. Specifically, defendant alleges that Warren would not present his claim that the Government failed to prove defendant was involved in a conspiracy to import heroin because Tondalaya Short and Keinya Collier, witnesses against defendant at trial, testified only that defendant recruited them to import diamonds and the indictments against these witnesses for conspiracy to import heroin were dismissed before defendant was ever indicted. Mot. at 4-5 n.1. Defendant also argues that, despite these facts, the Government argued to the jury that Short and Collier were defendant’s co-conspirators, and failed to provide the defense during discovery with documentation of the dismissal of the heroin charges against Short and Collier. Id. Based on these allegations, defendant requests that the Court “reinstate defendant’s Section 2255 proceeding,” appoint new counsel, and allow defendant to supplement the record with “the claim which could have completely exonerated [sic] the defendant, among others.” Id. at 3-4.

Based on a review of the Chambers file, the Court concludes that it appointed William A. DeStefano to represent defendant in connection with his § 2255 motion on remand, but that DeStefano understood the appointment to encompass his law partner in the firm of DeStefano & Warren, P.C., Christopher Warren. Several documents in this Court’s Chambers file indicate that the Court appointed DeStefano to represent defendant and that DeStefano understood the appointment to encompass his law partner. Notably, because of the age of the case, the Clerk of the Court has placed the Clerk’s file in remote storage, and thus the Court does not have access to the original appointment of counsel documents. Under the circumstances presented, the Court does not deem it necessary to retrieve that file in order to review those documents.

On October 2, 1996, George Wylesol, then Deputy Clerk for this Court, sent a letter to

William A. DeStefano, Esq., thanking him “for accepting the CJA appointment to represent Ifedo [sic] Noble Enigwe in the matter of U.S.A. v. Ifedo [sic] Noble Enigwe, CR. 92-257.” The language of this document indicates the Court appointed Mr. DeStefano in an individual capacity. However, in his first correspondence to the Court after this appointment, Mr. DeStefano articulated his belief that the Court appointed his firm, not just himself. In a letter to the Court written on October 28, 1996, DeStefano stated: “Earlier this month *we* were appointed to represent Mr. Enigwe in a §2255 petition currently pending before the Court.” (Emphasis added). The letterhead reads “DeStefano & Warren, P.C.” Later correspondence from Christopher Warren indicates that he shared DeStefano’s belief that the firm, and not just DeStefano, was appointed as counsel. An April 3, 1997 letter from Warren to the Court began: “As Your Honor may recall, *we* represent the defendant in connection with the above-referenced habeas corpus proceeding.” (Emphasis added).¹ These documents make clear that while the Court appointed William DeStefano as counsel for defendant in an individual capacity, DeStefano, and his partner Christopher Warren, understood the appointment to encompass both partners in the firm of DeStefano & Warren.

Despite the fact that the Court did not appoint Christopher Warren as counsel, defendant’s Motion to Vacate based upon Warren’s representation of him in connection with his § 2255 motion on remand must be denied. Defendant filed his motion under Federal Rule of Civil Procedure 60(b)(6), which provides: “On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for . . . any other

¹ Copies of George Wylesol’s letter of October 2, 1996, William DeStefano’s letter of October 28, 1996, and Christopher Warren’s letter of April 3, 1997, shall be docketed by the Deputy Clerk.

reason that justifies relief.” Relief under Rule 60(b)(6) is subject to various limitations and defendant cannot overcome these restrictions.

First, Rule 60(c) requires that a motion invoking its protections must “be made within a reasonable time.” Fed. R. Civ. P. 60(c).² In objecting to Warren’s representation as unauthorized, defendant relies on two docket entries, one from 1996 and one from 1997. Mot. at 1-2. Defendant knew or should have known of those docket entries at or about the time they were entered or soon thereafter, and he was also aware that Warren, and not DeStefano, was meeting with him, preparing legal documents on his behalf, and representing him at court hearings. Further, at that time, defendant stated in open court that he was satisfied with Warren as his attorney. Specifically, at a hearing on June 3, 1997, following a discussion of a letter written by defendant to Warren in which he criticized certain aspects of Warren’s work, defendant stated that he “may have overstated something” in the letter, wanted to continue with Warren as his attorney, and would “shake Mr. Warren’s hand as a good lawyer.” Enigwe, 1997 WL 430993, at *3; Tr. 6/3/97 at 12, 30-31. Defendant then waited ten years before filing this motion. Based on the length of this delay, defendant fails to meet the “reasonable time” requirement of Rule 60(c). Fed. R. Civ. P. 60(c); Gonzales v. Crosby, 545 U.S. 524, 535 (2005).

Second, relief under Rule 60(b)(6) requires a showing of “‘extraordinary circumstances’ justifying the reopening of a final judgment.” Crosby, 545 U.S. at 535 (citing Ackermann v. United States, 340 U.S. 193, 199 (1950)); see also Morris v. Horn, 187 F.3d 333, 341 (3d Cir.

² At the time that defendant filed his Motion to Vacate, the language detailing the timing requirements for motions under Rule 60(b) was found in Rule 60(b). Pursuant to an Amendment effective December 1, 2007, this language is now found under Rule 60(c). The change is “intended to be stylistic only.” Fed. R. Civ. P. 60, Notes of Advisory Committee on 2007 amendments.

1999). “Such circumstances will rarely occur in the habeas context.” Crosby, 545 U.S. at 535.

Defendant cannot show extraordinary circumstances justifying the reopening of the final judgment on his § 2255 motion because he cannot show that he was prejudiced by Warren’s representation. First, defendant’s own statements during the § 2255 proceedings indicate that he felt well-served by Warren as his counsel. Defendant never objected to Warren’s representation at that time. Rather, as noted above, defendant stated in open court that he was satisfied with Warren’s representation. Enigwe, 1997 WL 430993, at *3; Tr. 6/3/97 at 12, 30-31. Further, Mr. Warren was a member of the CJA panel at the time and the Court, too, noted in open court that Warren was a “fine lawyer” who knew the law, had defendant’s “best interests at the forefront,” and was vigorously advocating on defendant’s behalf. Tr. 6/3/97 at 31. Defendant’s decision not to object to Warren’s representation, combined with the fact that Warren was both qualified to represent defendant and in fact represented defendant ably and aggressively, make clear that defendant has failed to show prejudice from Warren’s representation, and thus has failed to show “extraordinary circumstances” justifying relief in this case. Crosby, 545 U.S. at 535.

Finally, the history of defendant’s pursuit of the claims he now seeks to present to the Court, and his decision not to pursue these claims in the context of his § 2255 motion on remand, provide further proof that no “extraordinary circumstances” exist justifying relief in this case. Crosby, 545 U.S. at 535. Contrary to defendant’s assertions, the main claim he now seeks to present to the Court - that the Government failed to prove defendant guilty of a conspiracy to import heroin - is not new and had been presented to the Court prior to the proceedings on his § 2255 motion on remand.

Defendant first raised the issue of the sufficiency of the evidence to sustain his conviction

for conspiracy to import heroin, with particular attention to his relationship with Short and Collier and their belief that they were importing diamonds, not heroin, in his *pro se* Motion for Judgment of Acquittal Pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure, or in the Alternative, for a New Trial (Doc. No. 50, filed August 21, 1992). The Court denied this motion on December 9, 1992, concluding that “sufficient evidence was submitted from which a rational jury could have found the defendant guilty beyond a reasonable doubt on all counts, and therefore, the finding of guilt must be sustained.” United States v. Enigwe, 1992 WL 382325, at *4 (E.D. Pa. Dec. 9, 1992). Defendant appealed and the Third Circuit Court of Appeals affirmed this Court’s decision. United States v. Enigwe, 26 F.3d 124 (3d Cir. 1994) (unpublished table decision). Defendant’s petition to the United States Supreme Court for a writ of certiorari was denied. Enigwe v. United States, 513 U.S. 950 (1994) (No. 94-5720).

Defendant again raised the issue of the conspiracy, and the specific question of a conspiracy to import diamonds as opposed to a conspiracy to import heroin, in his *pro se* Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 (Doc. No. 109, filed August 24, 1994), in the context of ineffective assistance of counsel and sufficiency of the evidence claims. In that motion, defendant also raised his complaint about the prosecutor referring to Short and Collier as defendant’s co-conspirators in his closing argument, again in the context of an ineffective assistance of counsel claim. Id. The Court found these arguments to be without merit. United States v. Enigwe, 1995 WL 549110. Moreover, at the second hearing on defendant’s § 2255 motion, which began on February 20, 1997, defendant chose not to present these arguments in his counseled § 2255 motion on remand. Specifically, defendant stated at the February 20, 1997 hearing that he was willing to proceed with only the arguments put forth by

Christopher Warren as his counsel and wanted to withdraw his previous *pro se* submissions. Enigwe, 1997 WL 430993, at *3 (citing Tr. 2/20/97 at 4: “Well, your Honor, my position today is that I have reviewed the papers filed by my attorney, and *I have decided to take his advice and drop the pro se pleadings and just rely on his representation.*”) (Emphasis added). Defendant reaffirmed this decision at the continuation of this hearing on June 3, 1997, stating, “Well, Your Honor, knowing everything you’ve said now and knowing that with the denial of the motion that I still have 235 months, *I’m still going to waive all those claims.*” Enigwe, 1997 WL 430993, at *3 (citing Tr. 6/3/97 at 31) (Emphasis added). Finally, with respect to defendant’s assertion that the Government violated discovery rules by not turning over documentation of the dismissal of the heroin charges against Short and Collier, Mot. at 4-5 n.1, the original indictments and the plea agreements for Short and Collier were received in evidence at trial as Government Exhibits 8, 9, 15, and 16, respectively, and thus were known to the defense at least as of that time. On the present state of the record, the Court does not know if these documents were turned over to the defense during discovery. However, under the circumstances presented, primarily defendant’s waiver of all of his *pro se* claims during the habeas proceedings on February 20, 1997, and June 3, 1997, and the time that has elapsed between the trial and the filing of the pending motion, over fifteen years, the Court does not deem it necessary to schedule an evidentiary hearing on the discovery claim.

This history of defendant’s pursuit of the claims he now seeks to present to the Court, and his decision not to pursue these claims in the context of his § 2255 motion on remand, provide further proof that no “extraordinary circumstances” exist justifying relief in this case. Crosby, 545 U.S. at 535.

B. Petition for Relief Pursuant to the Writ of Audita Querela (“Petition for Relief”)

In his Petition for Relief, defendant asserts that his “conviction and sentence should be vacated in its entirety” because there is no evidence that defendant entered into a conspiracy to import heroin. Pet. at 3-6. Defendant bases this argument upon two facts concerning Tondalaya Short and Keinya Collier, witnesses who testified against defendant at his trial: (1) the witnesses “testified that they were only told by [defendant] to import diamonds” and (2) the indictments against these witnesses for conspiracy to import heroin “were dismissed even before [defendant] was ever indicted.” Id. at 3. From these two facts, defendant concludes that the evidence shows at most that defendant was guilty of an unlawful agreement to import diamonds, and “[w]here no evidence exists at all to show that [defendant] entered into an agreement with anyone to import anything other than the diamonds, there cannot be a conviction for conspiracy to import heroin.” Id. at 3-4. Finally, defendant asserts that the Government committed a Brady violation by not providing defendant with documentation that the heroin indictments against Short and Collier were dismissed. Id. at 5.

The writ of *audita querela* is available to federal courts in criminal cases under the All Writs Act. 28 U.S.C. § 1651(a). The All Writs Act is “a residual source of authority to issue writs in exceptional circumstances only.” Hazard v. Samuels, 206 Fed. App’x 234, 236 (3d Cir. 2006) (citing Pennsylvania Bureau of Correction v. U.S. Marshal Serv., 474 U.S. 34, 43 (1985)). Against the backdrop of United States v. Morgan, 346 U.S. 502, 510 (1954), in which the Supreme Court held that § 2255 did not “cover the entire field” of post-conviction relief for federal prisoners, circuit courts have determined that the common law writs “can be used to the extent that they ‘fill in the gaps’ in post-conviction remedies.” United States v. Hannah, 174

Fed. App'x 671, 673 (3d Cir. 2006) (citing United States v. Valdez-Pacheco, 237 F.3d 1077, 1079 (9th Cir. 2001)).

Defendant may not resort to the exceptional remedy of the writ of *audita querela* in this case. In his Petition for Relief, defendant challenges his conviction and sentence on the grounds of insufficiency of evidence. Pet. at 3-4. Defendant previously presented this argument in his *pro se* Motion for Judgment of Acquittal Pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure, or in the Alternative, for a New Trial (Doc. No. 50, filed August 21, 1992) and his *pro se* motion under 28 U.S.C. § 2255 (Doc. No. 109, filed Aug. 24, 1994), and those motions were rejected by the Court. Enigwe, 1992 WL 382325 (E.D. Pa. Dec. 9, 1992), aff'd, 26 F.3d 124 (3d Cir. 1994) (unpublished table decision); United States v. Enigwe, 1995 WL 549110 (E.D. Pa. Sept. 11, 1995). A motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29, a motion for a new trial under Fed. R. Crim. P. 33, and a motion under 28 U.S.C. § 2255 are all viable post-conviction avenues of relief for pursuing such a claim, and the claim was litigated. Thus, no “gap” exists in post-conviction remedies such that defendant is entitled to again pursue this claim under the writ of *audita querela*. Hannah, 174 Fed. App'x at 673 (citing United States v. Valdez-Pacheco, 237 F.3d 1077, 1079 (9th Cir. 2001)).

In his Petition for Relief, defendant also raises a Brady claim, alleging that the Government failed to provide him with documentation of the dismissal of the heroin charges against Short and Collier during discovery. Pet. at 5. As previously stated, such documents were offered in evidence at trial. Thus defendant had knowledge of the documents at that time and failed to assert this claim until 2007. Moreover, 28 U.S.C. § 2255 provides a post-conviction avenue of relief for pursuing such a claim, and thus no “gap” exists in post-conviction remedies

such that defendant is entitled to pursue this claim under the writ of *audita querela*. Hannah, 174 Fed. App'x at 673 (citing United States v. Valdez-Pacheco, 237 F.3d 1077, 1079 (9th Cir. 2001)).

C. Certificate of Appealability

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 defendant has not made such a showing with respect to any of the claims raised in the above motion and petition. Therefore, the Court will not issue a certificate of appealability as to either the motion or the petition.

III. CONCLUSION

For the foregoing reasons, the Court denies defendant’s *pro se* Motion to Vccate [sic] Judgment of Section 2255 Motion Entered on July 17, 1997, Pursuant to Rule 60(B)(6) and defendant’s *pro se* Petition for Relief Pursuant to the Writ of Audita Querela.

The Court further denies issuance of a certificate of appealability as to the motion and the petition on the ground that defendant has not made a substantial showing of a denial of a constitutional right as required by 28 U.S.C. § 2253(c).

An appropriate Order follows.

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

UNITED STATES OF AMERICA,	:	CR NO. 92-257
v.	:	
IFEDOO NOBLE ENIGWE	:	CA NO. 08-797
	:	

ORDER

AND NOW, this 6th day of March, 2008, upon consideration of Defendant's *Pro Se* Motion to Vccate [sic] Judgment of Section 2255 Motion Entered on July 17, 1997, Pursuant to Rule 60(B)(6) (Doc. No. 463, filed September 7, 2007 in CR No. 92-257), the Government's Response to Defendant's Motion to Vacate Judgement [sic] of Section 2255 Motion Pursuant to Rule 60(B)(6) (Doc. No. 465, filed October 2, 2007), Defendant's *Pro Se* Traverse (Doc. No. 466, filed November 2, 2007), and Defendant's *Pro Se* Petition for Relief Pursuant to the Writ of Audita Querela (Doc. No. 1, filed February 19, 2008 in CA No. 08-797), for the reasons set forth in the attached Memorandum, **IT IS ORDERED** that Defendant's *Pro Se* Motion to Vccate [sic] Judgment of Section 2255 Motion Entered on July 17, 1997, Pursuant to Rule 60(B)(6) and Defendant's *Pro Se* Petition for Relief Pursuant to the Writ of Audita Querela are **DENIED**.

IT IS FURTHER ORDERED that a certificate of appealability will not issue on the ground that defendant has not made a substantial showing of a denial of a constitutional right as required under 28 U.S.C. § 2253(c)(2).

BY THE COURT:

/s/ Honorable Jan E. DuBois

JAN E. DuBOIS, J.