

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

UNITED STATES OF AMERICA

v.

ROBERT BURKE,
Defendant.

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CRIMINAL ACTION
NO. 92-268-1

Memorandum and Order

YOHN, J.

April ____, 2008

Presently before the court is defendant Robert Burke’s Independent Action for Relief from Order Denying Section 2255 Motion. Burke seeks relief pursuant to two grounds: (1) relief based on fraud on the court as set forth in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), *overruled on other grounds by Standard Oil Co. v. United States*, 429 U.S. 17 (1976); and (2) relief based on an independent action in equity to set aside a fraudulently obtained judgment pursuant to *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128 (9th Cir. 1195), and *Great Costal Express v. International Brotherhood of Teamsters*, 675 F.2d 1349 (4th Cir. 1982). For the reasons discussed below, Burke’s motion will be denied.

I. Factual and Procedural History

Burke, a federal prisoner and formerly a lawyer, is no stranger to this court. A jury found him guilty of the murder of federal witness Donna Willard and of related charges on August 26, 1993. On December 1, 1993, the court sentenced Burke to life in prison and to terms of 60 and

120 months running concurrently with his life sentence. Burke appealed his conviction and sentence to the Third Circuit, which affirmed on July 20, 1994. *See United States v. Burke*, 31 F.3d 1174 (3d Cir. 1994) (unpublished table decision). On January 17, 1995, the Supreme Court denied Burke's petition for a writ of certiorari. *See Burke v. United States*, 513 U.S. 1110 (1995).

Burke filed a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 on April 25, 1996. Burke claimed that his trial counsel was ineffective because the attorney suffered from a conflict of interest and because he failed to (1) call certain witnesses, (2) move for sequestration of the jury, and (3) introduce an answering machine tape recording of a message directed to Burke and in a voice recognized as that of James Louie, one of Burke's coconspirators. I denied Burke's § 2255 motion on November 8, 1996, finding that Burke's trial counsel's decisions not to call certain witnesses at trial and to decline to move for sequestration of the jury were reasonable tactical decisions. I also found that Burke's lawyer did not suffer from a conflict of interest and that Louie was so thoroughly cross-examined at trial that the omission of the answering machine message recording did not **prejudice Burke**. *See Burke v. United States (Burke I)*, No. 96-3249, 1996 WL 648452 (E.D. Pa. Nov. 8, 1996). The Third Circuit affirmed the denial of Burke's § 2255 motion on November 19, 1997. *See Burke v. United States*, 133 F.3d 911 (3d Cir. 1997) (unpublished table decision).

Burke then filed a second collateral attack on his conviction on January 20, 1999, characterizing it as an "Independent Action for Relief from the Judgment in a Criminal Case or, in the Alternative for Relief from the Order Denying the Section 2255 Motion." In this motion, Burke alleged that his conviction was tainted by the perpetration of fraud on the court and that he

had been constructively denied trial counsel because of improper jury instructions. Burke had three bases for his claim that the prosecution defrauded the court: (1) the prosecution told the jury that the government would recommend a sentence of twenty-five years for cooperating witness James Louie, when in fact it “recommended” a sentence of less than twenty-five years; (2) the prosecution failed to play the previously addressed answering machine tape recording, which Burke contended called into question the prosecutor’s argument that Louie was afraid of Burke; and (3) the prosecution “corrected” inconsistencies in Louie’s testimony concerning the location of an ATM withdrawal. I denied Burke’s second collateral attack on his conviction on November 23, 1999, finding that it was the functional equivalent of a habeas petition that had not been certified by the Court of Appeals as required by The Antiterrorism and Effective Death Penalty Act of 1996. I also examined the merits and held that even if Burke’s allegations of fraud were true, they did not amount to the requisite grave miscarriage of justice. Additionally, I concluded that Burke’s claim regarding constructive denial of trial counsel based on faulty jury instructions was barred because Burke had not shown that his failure to raise this argument during his § 2255 motion, which was based on ineffective assistance of counsel, was due to anything other than his own negligence. I also determined that the jury instructions were not faulty and did not constructively deny Burke trial counsel. *See Burke v. United States (Burke II)*, No. 96-3249, 1999 WL 1065217 (E.D. Pa. Nov. 23, 1999). **On May 8, 2001, the Third Circuit concluded that Burke’s claims were without merit and summarily affirmed the denial of his motion.** *See Burke v. United States*, No. 00-1323 (3d Cir. May 8, 2001).

Then, on January 14, 2005, Burke filed a “*Hazel-Atlas* Action for Relief from Order Denying Section 2255 Motion.” In support of this action, Burke presented “new evidence” in the

form of statements from four individuals: (1) John Foley, the man who, at James Louie's request, procured the services of Donna Willard's shooter; (2) Nick Vasiliades, a cell mate of witness James Gray; (3) Walter Kates, a prison acquaintance of James Louie; and (4) Anthony Cimino, a participant in the underlying insurance fraud scheme that precipitated Willard's murder. Burke argued that these statements showed that the government presented James Louie and James Gray as truthful witnesses even though it knew or should have known that their testimonies were false.

The details of the statements Burke presented in his January 2005 *Hazel-Atlas* Action are as follows. An investigator interviewed Foley on October 6, 2004, and Foley signed a transcript of the statement on October 19, 2004. In the statement, Foley opined that Louie had both the motive and the means to kill Willard himself. During the interview, Foley stated once that Louie never told him that Burke was involved in the murder. However, at two other times during the interview, Foley described Louie as implicating Burke in the murder. Foley further discussed two phone calls that he made to Louie, at the FBI's request, in which he unsuccessfully attempted to induce Louie to incriminate Burke. Finally, Foley stated that he shared this information with federal investigators before Burke's trial.

Vasiliades provided a written statement dated November 6, 2001. In his statement, Vasiliades explained that while in prison, he spoke with James Gray, a jailhouse informant who later testified at Burke's trial that Burke confessed to him. Vasiliades stated that Gray believed he would be rewarded for implicating Burke and planned to pretend that Burke confessed to him to take advantage of those rewards. Finally, Vasiliades said that he gave this information to Burke himself during Burke's trial, but not to the government.

Kates also provided a written statement dated October 9, 2002. In this statement, he explained that he met Louie in prison, where Louie told him that “the feds” wanted him to lie in court. Kates also stated that around this time he met Burke in a different prison, shared this information with Burke before Burke’s trial, and gave a statement to Burke’s investigator.

Cimino provided a typewritten statement dated December 18, 2002. In this statement, Cimino explained that one of the federal prosecutors told his attorney that Louie had planned to kill Cimino.

Burke also wrote a statement dated January 19, 2004 that listed the ways in which he believed Louie lied while testifying at Burke’s trial. Burke argued in his statement that he had ineffective trial and appellant counsel, which led to his conviction and to the Third Circuit’s affirming his conviction and sentence. Burke also stated that he was innocent of all crimes regarding Willard’s murder.

When ruling on Burke’s *Hazel-Atlas* Action, I first noted that it was not a second or successive habeas petition under *In re Weatherwax*, No. 99-3550 (3d Cir. Oct. 21, 1999). Then, after reviewing the merits of Burke’s arguments and his attached statements, I denied Burke’s *Hazel-Atlas* Action because I found that it failed to present clear, unequivocal, and convincing evidence that fraud was perpetrated on the court by an officer of the court. *See Burke v. United States*, No. 92-268, 2005 WL 2850354 (E.D. Pa. Oct. 28, 2005). I concluded that Burke’s *Hazel-Atlas* Action failed for three independent reasons. First, I determined that the motion failed because it did not properly allege and demonstrate that an officer of the court committed the alleged fraud that Burke argued led to his conviction. I reached this determination because Foley’s, Vasiliades’s, and Cimino’s statements sought only to impugn the credibility of witnesses

Louie and Gray and did not demonstrate that an officer of the court fabricated evidence or committed fraud on the court. Furthermore, I concluded that Kates's statement, which alleged that Louie said fraud was committed by "the feds" (1) did not "adequately ascribe the misconduct to an officer of the court and merely recite[d] what he says Louie told him"; (2) "could refer to any number of individuals within the federal law enforcement network, many of whom are not officers of the court"; and (3) was an "indefinite and imprecise hearsay accusation." *Id.* at *4-5.

Second, I reasoned that Burke's *Hazel-Atlas* Action failed because Kates's statement did not "present compelling evidence that the alleged fraud actually occurred" because it contained "second-hand, unsupported allegations." *Id.* at *5. Notably, the statement did not provide compelling evidence because it did not come from Louie or any officers of the court and instead was comprised of speculative accusations, which did not meet the level of proof exemplified in *Hazel-Atlas*.

Finally, I determined that the "inconsequential nature" of the claim was emphasized by Burke's decision to wait more than eleven years after his trial to bring this information forward, even though Kates had shared the alleged fraud information with Burke and was interviewed by Burke's investigator prior to Burke's trial. Thus, I concluded "that if there really was a danger of fraud upon the court, Burke should (and presumably would) have pressed the issue at his trial or in one of his two previous collateral proceedings." *Id.*

The Third Circuit affirmed the denial of Burke's *Hazel-Atlas* Action on August 1, 2006. *See Untied States v. Burke*, 193 F. App'x 143 (3d Cir. 2006) (per curiam). The Third Circuit determined that the appeal did not present a substantial question and concluded:

The District Court . . . correctly concluded that Burke failed to establish by

clear and convincing evidence that the prosecution intentionally misled the court. None of the four new affidavits charges that a prosecuting official had actual knowledge of the falsity of either Louie's or Gray's testimony. In fact, only Walter Kates states that the "feds" and the "Government" told Louie to testify against Burke. However, this is not sufficient to implicate the prosecuting officials specifically. Even if Burke's evidence is sufficient to establish that Louie and Gray lied on the stand, it does not establish that the prosecution intentionally permitted or condoned it.

Id. at 144.

On August 27, 2007, Burke filed the current motion, which he entitles an "Independent Action for Relief from Order Denying Section 2255 Motion."¹ Burke seeks relief pursuant to *Hazel-Atlas* for a second time and brings an independent action in equity to set aside a fraudulently obtained judgment.

II. The New Statements

To support his current argument that he is entitled to relief, Burke includes the following: (1) a written statement from Kates dated January 29, 2007 and an addendum dated October 9, 2006 that supplements Kates's October 9, 2002 statement; (2) a supplemental statement from Vasiliades dated August 1, 2006; and (3) a statement from Burke dated November 11, 2006. Kates's addendum explains that when he was contacted for more information about Burke's case, he found two names he had written down that were not in his original statement. Specifically, Kates states that the people he referred to as "the feds" in his original statement were the prosecutors in Burke's case, either Leon Dopkins or Dobkins and Joan Markman.² Then, Kates

¹Although Burke has titled his motion as an attack on the court's denial of his § 2255 motion, his arguments focus on what he alleges was fraud that occurred during his trial.

² Lee Dobkin and Joan Markman were the Assistant U.S. Attorneys assigned to try Burke's case.

recounts how he met Louie in prison. Kates explains that after he and Louie became acquaintances, Louie told him that Dobkin and Markman wanted Louie to lie in court and testify that Burke set up the murder. According to Kates, Louie said he told Dobkin and Markman that he would not lie, and they in turn threatened him with another “diesel tour”³ if he did not cooperate by lying. Additionally, Kates said Louie told him the prosecutors would not adhere to Louie’s plea agreement unless Louie testified that Burke set up Willard’s murder. Kates then relates that Louie also told him that he would do whatever it took to get “them,” but Louie did not specify to whom “them” referred. Kates states that he told Burke all of this information prior to Burke’s trial and then met with Burke’s investigator and retold all of this information again.⁴

Vasiliades explains in his statement that Gray had told him the names of certain prosecutors and agents who Gray said spoke with him. Vasiliades does not, however, remember their names. Vasiliades also states that Gray told him the prosecutor knew Gray was lying, but the prosecutor did not care.

Burke argues in his statement that Kates’s and Vasiliades’s new statements entitle him to relief.⁵ Specifically, he contends that Kates’s statement shows that the prosecution instructed

³ Kates explains that a “diesel tour” refers to sending a federal inmate to a state-run facility, which Kates says inmates view as a less desirable placement than a federal facility. Kates states that Louie had previously been sent to a state-run facility for not cooperating with the prosecutors and that Louie said he did not want to return to a state-run facility.

⁴ Kates also provides that one of the prosecutors was removed from Louie’s case because of misconduct. He does not, however, offer any information as to how he learned of this removal or support his allegation with any specific statements.

⁵ Several explanations and arguments in Burke’s statement do not pertain to the current motion because they have already been analyzed in Burke’s previous motions or do not contain allegations of fraud on the court. They are also repetitive of the arguments and theories Burke set forth in his January 19, 2004 statement. First, Burke argues that his innocence was not proven at

Louie to lie about Burke's involvement in Willard's murder. Burke further argues that Vasiliades's statement shows that the prosecution knew Louie was lying. He concludes that this evidence shows that the prosecutors obtained his conviction through testimony they knew or had reason to know was false and misleading and that they defeated his § 2255 motion using this same false evidence.

III. Discussion

Burke seeks relief because of fraud on the court under *Hazel-Atlas* and brings an independent action in equity for relief from a judgment he alleges was based on fraud. These are separate actions. See 12 James W. Moore, *Moore's Federal Practice* § 60.81 (3d ed. 2007) (noting that fraud on the court deals with integrity of the courts and the typical independent action deals with justice between the parties). Both, however, are equitable remedies reserved to the courts by the savings clause of Federal Rule of Civil Procedure 60.⁶ The savings clause does

trial for reasons that were already ruled on in the Memorandum and Opinion denying Burke's § 2255 motion. See *Burke I*, 1996 WL 648452, at *2-3, 6. I have also previously addressed and rejected Burke's argument that the prosecutors fraudulently omitted from trial the tape recording of the telephone message Louie left Burke. See *Burke II*, 1999 WL 1065217, at *4.

Burke also attempts to argue that his trial counsel's alleged conflict of interest precluded the jury from finding him not guilty. Again, however, this argument has already been addressed and is not appropriate for consideration here. See *Burke I*, 1996 WL 648452, at *7.

Additionally, Burke lists various ways in which he believes Louie lied during his trial testimony at Burke's trial. These arguments are repetitive and unpersuasive. The issues of Louie's credibility were addressed in each of Burke's two collateral attacks on his conviction. See *Burke II*, 1999 WL 1065217, at *3-4; *Burke I*, 1996 WL 648452, at *5-6.

⁶ The provision commonly known as the "savings clause" states:

This rule does not limit a courts power to:

- (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
- (2) grant relief under 28 U.S.C. § 1655 to a defendant who was not personally notified of the action; or
- (3) set aside a judgment for fraud on the court.

not create a new cause of action; rather, “Rule 60[d] 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.**” Moore, *supra*, § 60.80.

A. Fraud on the Court under *Hazel-Atlas*

All courts have the inherent equitable power to vacate a judgment that has been obtained through the commission of fraud on the court. *Universal Oil Prods. Co. v. Root Ref. Co.*, 328 U.S. 575, 580 (1946). However, “[b]ecause of their very potency, inherent powers must be exercised with restraint and discretion.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991).

Almost all of the principles that govern a claim of fraud on the court find their genesis in *Hazel-Atlas*, a patent case. In *Hazel-Atlas*, an attorney for defendant Hartford wrote an article praising a Hartford product as an advance in the field and had the article printed in a trade journal under the name of an ostensibly disinterested expert. 322 U.S. at 240. The Patent Office and the Third Circuit relied in part on this article when ruling in favor of Hartford in patent application and infringement cases. *Id.* at 240-41. The Supreme Court found conclusive evidence that this article was used for fraudulent purposes, and in granting relief to *Hazel-Atlas* explained that “[f]rom the beginning there has existed . . . a rule of equity to the effect that under certain circumstances, one of which is *after-discovered* fraud, relief will be granted against judgments regardless of the term of their entry.” *Id.* at 244 (emphasis added). The Court further noted that:

This is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed possibly to have been guilty of perjury. Here, even if we consider nothing but Hartford’s sworn admissions, we find a deliberately planned and carefully executed scheme to defraud not only the Patent

Fed. R. Civ. P. 60(d). This savings clause was formerly contained within Rule 60(b), but recent amendments to the Federal Rules of Civil Procedure moved the provision to Rule 60(d).

Office but the Circuit Court of Appeals. Proof of the scheme, and of its complete success up to date, is conclusive.

Id. at 245-46 (internal citation omitted). There is no statute of limitations for bringing a fraud on the court claim. *Id.* at 244. As a court of appeals has explained, “a decision produced by fraud on the court is not in essence a decision at all and never becomes final.” *Kenner v. Comm’r of Internal Revenue*, 387 F.2d 689, 691 (7th Cir. 1968).

A fraud on the court action must satisfy a very demanding standard to justify upsetting the finality of the challenged judgment. The Third Circuit described the standard as follows:

In order to meet the necessarily demanding standard for proof of fraud upon the court we conclude that there must be: (1) an intentional fraud; (2) by an officer of the court; (3) which is directed at the court itself; and (4) in fact deceives the court. We further conclude that a determination of fraud on the court may be justified only by the most egregious misconduct directed to the court itself, and that it must be supported by clear, unequivocal and convincing evidence.

Herring v. United States, 424 F.3d 384, 386-87 (3d Cir. 2005) (internal footnote, quotation marks, and citation omitted). In *Herring*, the Third Circuit also determined that “the fraud on the court must constitute ‘egregious misconduct . . . such as bribery of a judge or jury or fabrication of evidence by counsel,’” *id.* at 390 (citation omitted), and that “perjury by a witness is not enough to constitute fraud upon the court,” *id.* (citation omitted).

Turning to Burke’s allegations of fraud on the court in this, his second *Hazel-Atlas* Action, the new statements only specify that the prosecutors, who are officers of the court, allegedly perpetrated the fraud. Other than these new hearsay allegations, the statements do not provide any additional evidence, and they do not overcome all of the deficiencies found in Burke’s first *Hazel-Atlas* Action. Kates’s statement provides the most information, but it does not provide clear, unequivocal, and convincing evidence of fraud. First, the accuracy of Kates’s

belatedly remembered additional information that “the feds” who insisted that Louie lie during his testimony were Leon Dobkin and Joan Markman is questionable. Second, even if true, this secondhand, hearsay allegation, without more, does not establish clear and convincing evidence of “a deliberately planned and carefully executed scheme” as existed in *Hazel-Atlas*, see 322 U.S. at 245, or of “an intentional fraud” as required by *Herring*, see 424 F.3d at 386. Furthermore, Kates’s original statement demonstrated that Burke knew about this evidence before or during trial. The alleged fraud is not *after-discovered* evidence, which is the type of evidence *Hazel-Atlas* focused on when describing the evidence that shows fraud on the court.⁷

Vasiliades’s statement is equally unpersuasive. Although he now alleges that Gray said a prosecutor knew he, Gray, was lying, Vasiliades provides nothing to support this allegation. Notably, Vasiliades does not have firsthand knowledge that the prosecutor was certain of the lack of veracity of Gray’s statements. Rather, his knowledge comes from what Gray told him. It is thus hearsay evidence of Gray’s opinion of the unnamed prosecutor’s state of mind. Therefore, there is still no clear, unequivocal, and convincing evidence of a deliberately planned and carefully executed scheme or of an intentional fraud. Finally, Burke’s statement does not provide any previously unaddressed factual evidence of fraud on the court; thus, it clearly does not constitute clear, unequivocal, and convincing evidence.

In conclusion, even though the newly provided information alleges that the fraud was perpetrated by officers of the court, Burke has not shown by clear, unequivocal, and convincing **evidence that there was fraud on the court.** As with Burke’s first *Hazel-Atlas* Action, there is no

⁷ Kates’s statement that Louie said to him that one of the prosecutors was removed from his case because of misconduct is also a secondhand, unsupported allegation devoid of specifics that does not sufficiently demonstrate fraud on the court.

compelling evidence of fraud because Burke's only evidence consists of secondhand, unsupported allegations of fraud. Additionally, Burke knew about the alleged fraud prior to trial but did not present or attempt to present evidence of the fraud at trial. If there had been fraud, or even an attempt at fraud, Burke should have brought this to the court's attention either prior to or during his trial. Burke's second *Hazel-Atlas* Action will be denied accordingly.

B. Independent Action in Equity

Regarding independent actions in equity, the Third Circuit has stated that:

“The indispensable elements of such a 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 F. App'x 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)). “[A]n independent equitable action for relief from judgment may only be employed to prevent manifest injustice.” *Id.* at 863. Thus, an independent action “must, if Rule 60(b) is to be interpreted as a coherent whole, be reserved for those cases of ‘injustices which, in certain instances, are deemed sufficiently gross to demand a departure’ from rigid adherence to the doctrine of res judicata.” *United States v. Beggerly*, 524 U.S. 38, 46 (1998) (citing *Hazel-Atlas*, 322 U.S. at 244). In other words, independent actions in equity must be reserved for extraordinary circumstances. *See id.*

According to the Supreme Court, the requisite grave miscarriage of justice occurred in *Marshall v. Holmes*, 141 U.S. 589 (1891), when “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. On the other hand, the Court explained that the requisite grave miscarriage of justice did not occur in *Beggerly*, where the “[r]espondents allege[d] only that the United States failed to thoroughly search its [title] records and make full disclosure to the Court.” *Id.* (quotation marks and citation omitted).

Burke has not shown that the alleged fraud, if in fact it occurred, was a grave miscarriage of justice requiring relief through an independent action in equity. Burke listed the elements of an independent action in equity, but he did not argue that his evidence demonstrates that he has met these elements and that he is entitled to this extraordinary relief. Specifically, he has not demonstrated that his conviction is a judgment that should not in equity and good conscience be enforced, or that there is a good defense to the alleged cause of action, or argued that there is no adequate remedy at law. Even more important, the evidence that Burke provided shows that he knew about the alleged fraud prior to or during trial. Despite having this information during his trial, Burke did not present it to the court until he filed his first *Hazel-Atlas* Action, over twelve years after his trial. Thus, it was Burke’s own negligence that precluded his previously arguing that there was fraudulent conduct by the prosecution. Accordingly, Burke has not demonstrated that there is an absence of fault or negligence on his part, which he is required to do in order to show that he is entitled to equitable relief.

Even if Burke had presented this evidence at trial, however, his allegations do not demonstrate the “extraordinary circumstances” and the “grave miscarriage of justice” that the Supreme Court and the Third Circuit have found are necessary for the court to provide equitable relief from his conviction. The statements do not suffice because they are secondhand, hearsay allegations that are unsupported and, therefore, they do not provide evidence compelling enough

to justify relief from judgment. Burke's independent action in equity will be denied accordingly.

IV. Conclusion

In sum, Burke's new allegations do not overcome the remaining deficiencies of his first *Hazel-Atlas* Action. Because Burke has not provided clear, convincing, and unequivocal evidence of fraud on the court, his second action for relief under *Hazel-Atlas* will be denied. Additionally, Burke has not demonstrated that there are extraordinary circumstances that led to a grave miscarriage of justice; thus, his independent action seeking equitable relief will also be denied.

An appropriate order follows.

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

UNITED STATES OF AMERICA

v.

ROBERT BURKE,
Defendant.

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CRIMINAL ACTION
NO. 92-268-1

Order

And now, this _____ day of April 2008, upon careful consideration of defendant Robert Burke's Independent Action for Relief from Order Denying Section 2255 Motion (Docket No. 197), IT IS HEREBY ORDERED that the motion is DENIED.

s/William H. Yohn Jr.
William H. Yohn Jr., Judge