

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

UNITED STATES OF AMERICA

v.

ROBERT BURKE,

Defendant.

Cr. No. 92-268

Civ. No. 96-3249

MEMORANDUM

YOHAN, J.

August ____, 2014

On August 28, 2013, Defendant Robert Burke filed a pro se “Motion for an Independent Action for Fraud on the Court and/or Rule 60(d)” seeking reversal of my 1996 order denying his motion under 28 U.S.C. § 2255 to set aside his sentence. The United States filed a response on April 10, 2014, and Burke filed a traverse on May 12, 2014. I denied Burke’s motion on July 21, 2014.¹

Burke now files a motion under Rule 59(e) of the Federal Rules of Civil Procedure in which he asks the court to alter or amend its July 21, 2014 order. Burke’s Rule 59(e) motion is based on his contentions that (1) the court violated his due process rights by denying his August 28, 2013 motion without conducting an evidentiary hearing on his claims; (2) the court improperly refused to acknowledge the United States’s alleged admission of 121 “facts” related to his August 28, 2013 motion, which Burke presented to the court in a motion for summary

¹ Burke is a former lawyer who was convicted by a jury in 1993 of the murder of federal witness Donna Willard and of related charges. I sentenced Burke to life in prison and to concurrent terms of 60 and 120 months. He has since filed five post-conviction petitions, each of which has been denied. *See United States v. Burke*, CR 92-268, 2014 WL 3600467 (E.D. Pa. July 21, 2014).

judgment that he filed on May 21, 2014; (3) the court failed to decide his May 21, 2014 motion for summary judgment; (4) the court's denial of his August 28, 2013 motion was incompatible with the alleged government admissions; and (5) the court knowingly abused its discretion by not acknowledging the alleged government admissions, not ordering an evidentiary hearing, and not ruling on his motion for summary judgment.

Fed. R. Civ. P. 59(e) provides that a motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment. Fed. R. Civ. P. 59. "Rule 59(e) makes explicit that the district court may continue to exercise the inherent power that it has to rectify its own mistakes prior to the entry of judgment for a brief period of time immediately after judgment is entered." *Blystone v. Horn*, 664 F.3d 397, 414 (3d Cir. 2011) (citing *White v. N.H. Dep't of Emp't Sec.*, 455 U.S. 445, 450 (1982)). "[M]otions [under Rule 59(e)] are not to be used as an opportunity to relitigate the case; rather, they may be used only to correct manifest errors of law or fact or to present newly discovered evidence." *Id.* at 415.

Under these standards, Burke has not offered any basis for amending or altering my July 21, 2014 order.

As to his due process claim, I denied Burke's motion because I found that each of the claims in that motion either could not meet the exceptionally demanding standards of *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944) or had previously been found to fail in one or more of Burke's prior collateral appeals. Burke's claims therefore failed as a matter of law, "and due process does not require an evidentiary hearing as a prerequisite to a valid determination of a question of law." *N. L. R. B. v. Sun Drug Co.*, 359 F.2d 408, 415 (3d Cir. 1966) (noting that, "otherwise, summary judgment in a civil action would violate due process").

As to the alleged 121 admissions by the government, the court finds that the government has not admitted any of the “facts” alleged by Burke. Burke asserts the purported admissions based on Rule 36 of the Federal Rules of Civil Procedure. As he states in his motion for summary judgment:

On 1 April 2014, 121 “Requests to Admit” (“RTA”) were mailed to Respondent: The Government. The Government declined to answer any one of said RTA’s, according to Petitioner’s son, Eric Burke, as conveyed to him by AUSA Karen Krigsby, in his telephone conversation directly with her on 14 May 2014. The Government’s failure to respond has the consequence of automatically admitting all factual allegations with no motion necessary as Rule 36(a)(3) is self-executing.

Rule 36 is a pre-trial, civil litigation discovery device that is not available to a post-trial, criminal defendant such as Burke. Because Rule 36 is inapposite, the government’s alleged disinterest in responding to his 121 requests to admit cannot be taken as an admission of anything. There is therefore no error in the court’s not acknowledging them.

As to the motion for summary judgment, summary judgment is also a pre-trial, civil litigation device. *See Fed. R. Civ. P. 56*. As a post-trial criminal defendant, Burke has no entitlement to file the motion contemplated by Rule 56, either. To the extent Burke believes that the court erred in not entering a denial of his summary judgment motion sooner, the court will deny the summary judgment motion as not cognizable.²

Because Burke’s first three claims are unavailing, so too are his final claims. As I find that the government cannot be taken to have admitted to anything as a result of Burke’s requests for admission, the court’s denial of his August 28, 2013 motion cannot have been in error on the basis of those alleged admissions. Meanwhile, the court cannot have abused its discretion in the way that Burke alleges given that the government did not make the alleged admissions, Burke

² Burke re-docketed his motion for summary judgment on August 14, 2014, such that it is separately listed as a new motion for summary judgment (Doc. 234). I will deny that motion as moot.

was not entitled to an evidentiary hearing, and Burke was not entitled to make a motion for summary judgment.

Burke presents no newly discovered evidence, and he has not shown any manifest legal error in the denial of his “Motion for an Independent Action for Fraud on the Court and/or Rule 60(d).” Accordingly, his motion under Rule 59(e) will be denied. *See Blystone*, 664 F.3d at 415.

Appropriate orders follow.

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ORDER

AND NOW this 26th day of August, 2014, it is **HEREBY ORDERED** that:

1. Upon consideration of the defendant's motion for summary judgment (Doc. 230), filed on or about May 27, 2014, the defendant's motion is **DENIED** as not cognizable.
2. Upon consideration of the defendant's motion for summary judgment (Doc. 234), filed on or about August 14, 2014, the defendant's motion is **DENIED** as moot.
3. Upon consideration of the defendant's motion to alter or amend judgment under Rule 59(e) of the Federal Rules of Civil Procedure (Doc. 235), filed on or about August 14, 2014, and the addendum filed August 18, 2014, the defendant's motion is **DENIED**.

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