

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

UNITED STATES OF AMERICA : CRIMINAL ACTION  
 : No. 06-367  
 v. :  
 :  
 GREGORY JONES :

M E M O R A N D U M

EDUARDO C. ROBRENO, J.

February 9, 2015

Petitioner Gregory Jones ("Petitioner") is a federal prisoner incarcerated at FCI Elkton in Lisbon, Ohio. Petitioner filed a motion under 28 U.S.C. § 2255 (the "\$ 2255 Motion") to vacate, set aside, or correct his sentence. This Court denied the § 2255 Motion with prejudice, and Petitioner now claims he is entitled to relief from that judgment--and from this Court's order clarifying his restitution obligation--under Federal Rule of Civil Procedure 60. For the reasons set forth below, the Court will deny Petitioner's motion.

**I. BACKGROUND**

On December 14, 2006, a grand jury in the Eastern District of Pennsylvania returned a superseding indictment against Petitioner, charging him with one count of conspiracy to commit access device fraud and identity theft, one count of producing and trafficking in counterfeit access devices, two

counts of possessing fifteen or more unauthorized access devices, two counts of possessing access device-making equipment, two counts of possessing document-making equipment, and one count of aggravated identity theft, in violation of 18 U.S.C. §§ 371, 1029(a)(1), 1029(a)(3), 1029(a)(4), 1028(a)(5), 1028A(a)(1), and 2. See Superseding Indictment, ECF No. 40.

On March 15, 2007, Petitioner entered an open plea of guilty to the nine-count superseding indictment. Petitioner admitted that he had conspired to make and made counterfeit credit cards, debit cards, and identification documents with co-defendant Brian Morgan from at least 2003 to February 7, 2006, and that, after the arrest of Morgan on February 7, 2006, Petitioner continued to make counterfeit credit cards, debit cards, and identification documents at his apartment.

Prior to sentencing, Petitioner's counsel filed objections to the U.S. Probation Office's Presentence Investigation Report ("PSR"), including objections to the Guideline calculations for loss amount under U.S.S.G. § 2B1.1, and the Guideline enhancement for obstruction of justice under § 3C1.1. During two days of hearings, Petitioner and the Government presented witnesses and exhibits to address Petitioner's objections, and to establish the restitution owed.

On May 29, 2008, the Court issued an order and memorandum finding for Petitioner in part and for the Government

in part in the calculation of the Guidelines. The Court, in particular, held that all 16-digit account numbers found on receipts, Comcast account records, and skimmers that were seized during the searches, regardless of whether the account numbers were valid or fictitious, were "access devices" and to be included in calculating the Guideline loss amounts. Court Memorandum dated May 29, 2008, at 7-14, ECF No. 134. The Court held that co-defendant Morgan's account numbers were to be included in calculating Petitioner's loss amount as relevant conduct under U.S.S.G. § 1B1.3(a)(1). Id. at 15-18. The Court also found that Petitioner had obstructed justice when he failed to report ownership of 5359 Grays Avenue, Philadelphia, Pennsylvania, in the affidavit that he submitted to the U.S. Probation Office. Id. at 24-30.

On May 30, 2008, the Court sentenced Petitioner to 144 months' imprisonment followed by three years' supervised release, and ordered him to pay \$311,575.35 in restitution--which included \$288,687.06 in restitution owed to American Express. ECF No. 136.

On June 5, 2008, Petitioner's counsel timely appealed to the Third Circuit, challenging, in part, the sentencing enhancements for loss amount and obstruction of justice. On June 24, 2009, the Third Circuit entered judgment affirming this Court's rulings and sentence. Petitioner sought a rehearing en

banc, and his request was denied on November 13, 2009. On February 18, 2010, Petitioner sought a writ of certiorari from the U.S. Supreme Court, which was denied on March 22, 2010.

On March 22, 2011, Petitioner filed a pro se motion under 28 U.S.C. § 2255. ECF No. 143. In his § 2255 Motion, Petitioner challenged the loss amount calculations under U.S.S.G. § 2B1.1, the obstruction of justice enhancement under § 3C1.1, and the restitution order to American Express. Petitioner argued that, based on algorithmic calculations, several of the account numbers on which the Court relied in calculating the loss amount were not valid, that the Court had also wrongly included account numbers that belonged to co-defendant Morgan in calculating Petitioner's loss amount, and that Petitioner's counsel was ineffective for having failed to raise these arguments at sentencing. Petitioner also argued that in the PSR, U.S. Probation had improperly supported the obstruction enhancement for Petitioner's failure to report ownership of 5359 Grays Avenue in a bankruptcy filing, and that Petitioner's counsel was ineffective for having failed to examine the probation officer at sentencing regarding this statement in the PSR. In support of his restitution challenge, Petitioner claimed that an agent had perjured himself when he testified at sentencing to American Express's fraud loss of \$288,687.06, and Petitioner's counsel was ineffective for not

having objected to or demanded production of proof as to the actual losses suffered by American Express.

On December 21, 2011, the Court denied Petitioner's § 2255 Motion. The Court denied Petitioner's loss amount claim because his counsel had argued for excluding fictitious account numbers and co-defendant Morgan's account numbers from the loss amount at sentencing, and the Court had rejected that argument. The Court also denied the obstruction enhancement claim because the Court had found obstruction based on his failure to report ownership of 5359 Grays Avenue to Probation, and not based on his failure to report ownership in a bankruptcy filing. The Court denied Petitioner's challenge to restitution both procedurally, on the grounds that the Court lacked authority to modify restitution orders under § 2255, and substantively, finding that the agent's testimony had not changed the ultimate restitution order or created a fundamental defect in the Petitioner's sentencing.

The Court found that Petitioner was not entitled to a certificate of appealability. Petitioner, nonetheless, filed for a certificate of appealability with the Third Circuit Court of Appeals--which was denied on September 18, 2012.

On September 22, 2011, the Government filed a motion to clarify the Court's restitution order, pursuant to Federal Rule of Criminal Procedure 36, the All Writs Act, 28 U.S.C.

§ 1651, and the Mandatory Victims Restitution Act, 18 U.S.C. § 3664. The Government filed the motion because when it was preparing its response to Petitioner's § 2255 Motion, American Express advised the Government that, of the \$288,687.06 in losses that American Express had suffered as a result of Petitioner's fraud, American Express had charged back \$199,877.16 to the merchant stores who had not followed proper procedures when they allowed these fraudulent charges. The merchant stores, thus, ultimately suffered these losses. The Government sought a clarification of Petitioner's restitution order to reflect that, while the total restitution remained the same, \$199,877.16 of that restitution should be paid to the merchant stores rather than American Express. On October 6, 2011, the Court entered an order thus clarifying Petitioner's restitution. ECF No. 157.

Petitioner appealed the Court's order clarifying Petitioner's restitution. On March 14, 2012, the Third Circuit dismissed the appeal, finding that the Court's order of October 6, 2011, did not change Petitioner's overall restitution amount.

On January 24, 2014, Petitioner filed the instant motion pursuant to Federal Rule of Civil Procedure 60(b)(4) and (d)(3). ECF No. 175. In his motion, Petitioner moves to set aside the Court's order clarifying restitution on the grounds that the agent allegedly perjured himself regarding the fraud

loss that American Express suffered. Petitioner also moves to set aside the Court's order denying his § 2255 Motion on the ground that the Court had failed to consider arguments that he had raised in the motion. Petitioner claims that the Court failed to consider arguments about the agent's perjurious testimony, Petitioner's algorithm analysis evidence, the improper inclusion of co-defendant Morgan's account numbers, and the nonexistence of public record in support of the obstruction enhancement.

The Government filed a response to Petitioner's Rule 60 motion on April 21, 2014. ECF No. 180. On June 27, 2014, Petitioner filed a reply to the Government's response. ECF No. 187. The motion is now ripe for review.

## **II. LEGAL STANDARD**

Federal Rule of Civil Procedure 60(b) enables a party to move for relief from a judgment based on the following:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;;
- (4) the judgment is void;

(5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

The Third Circuit has held that "a Rule 60(b) motion may not be used as a substitute for appeal, and that legal error, without more, cannot justify granting a Rule 60(b) motion." Smith v. Evans, 853 F.2d 155, 158 (3d Cir. 1988) (citing Martinez-McBean v. Gov't of Virgin Islands, 562 F.2d 908, 912 (3d Cir. 1977)).

A party may also request that a court "set aside a judgment for fraud on the court" under Rule 60(d)(3). The Third Circuit has emphasized, however, 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) (citation omitted).

### **III. DISCUSSION**

Petitioner seeks to use Rule 60 to overturn this Court's grant of the Government's motion to clarify restitution and the Court's denial of Petitioner's § 2255 Motion. Because

Petitioner's assertions of error do not fall within the narrow scope of Rule 60, his motion must be denied.

A. Order Clarifying Restitution

Petitioner argues that the Court's October 6, 2011, order clarifying restitution is void under Rule 60(b)(4) because the Court lacked jurisdiction, and under Rule 60(d)(3) for fraud on the Court. The Court will address each claim in turn.

1. Rule 60(b)(4)

Rule 60(b)(4) allows a court to relieve a party from a final judgment if "the judgment is void." A judgment is void if the court lacked jurisdiction over the subject matter or the parties, or if the court "entered a 'decree which [was] not within the powers granted to it by the law.'" Marshall v. Bd. of Educ., 575 F.2d 417, 422 (3d Cir. 1978) (citation omitted). However, "a judgment is not void and is therefore not within the ambit of Rule 60(b)(4) simply because it [was] erroneous, or [was] based upon precedent which is later deemed incorrect. . . ." Id.

Petitioner argues that the Court's order clarifying Petitioner's restitution was void because the Court lacked jurisdiction to reconsider the restitution ordered. Under Federal Rule of Criminal Procedure 36, however, this Court had

the authority and jurisdiction to grant this relief. Specifically, Rule 36 provides: “[a]fter giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.”

The Third Circuit and other courts have consistently relied on Rule 36 to make modifications to judgments of sentences where the corrections are deemed non-substantive. See, e.g., United States v. Williams, 223 F. App’x 183, 184 (3d Cir. 2007) (per curiam) (affirming district court’s order correcting a sentence to make restitution joint and several); United States v. Bennett, 423 F.3d 271, 281-82 (3d Cir. 2005) (affirming district court’s correction of a sentence by adding a preliminary forfeiture order to the sentence, as it was deemed a correction of a clerical error); United States v. Green, 427 F. App’x 872, 873 (11th Cir. 2011) (holding that district court properly corrected a sentence pursuant to Rule 36 by checking the erroneously unchecked box ordering restitution). The court in United States v. Portillo specifically relied on Rule 36 to authorize the court to substitute the proper victims in a defendant’s judgment of sentence, as in the instant case. 363 F.3d 1161, 1165 (11th Cir. 2004) (per curiam).

The All Writs Act, 28 U.S.C. § 1651, and the Mandatory Victim Restitution Act ("MVRA"), 18 U.S.C. § 3663, et seq., also provided this Court with authority and jurisdiction to grant the relief requested by the Government. Under the All Writs Act, the Court may issue other writs as needed to support Federal Debt Collection Procedure Act remedies to enforce judgments, including, pursuant to 18 U.S.C. § 3613(a), criminal restitution judgments. 28 U.S.C. § 3202(a). The MVRA, more specifically, provides that when victims are compensated by other sources, the other sources should then be compensated and made whole:

(1) If a victim has received compensation from insurance or any other source with respect to a loss, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

(2) Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in-

(A) any Federal civil proceeding; and

(B) any State civil proceeding, to the extent provided by the law of the State.

18 U.S.C. § 3664(j).

In this case, the Court relied on this precedent and authority in issuing its October 6, 2011, order making the non-substantive correction to Petitioner's restitution order. The

Third Circuit, moreover, affirmed this Court's order and authority. Therefore, the Court had the jurisdiction and power as granted by law to issue its order.

The Court's October 6, 2011, order is not void under Rule 60(b)(4) as argued by Petitioner. For the Court's judgment to be void, either the Court must have lacked jurisdiction or the entry of the order must have been outside the Court's powers as granted by law. Marshall, 575 F.2d at 422. Neither is the case here, as the Court had the jurisdiction and acted within its power under the law and existing precedent. Moreover, Rule 60(b)(4) does not permit claims that the Court erred or wrongly relied on precedent. Id. Petitioner's attempt to reopen the Court's judgment on the grounds that it is void lacks merit, and thus, Petitioner's motion under Rule 60(b)(4) will be denied.

2. Rule 60(d)(3)

Under Rule 60(d)(3), a court may exercise authority to set aside a judgment for fraud on the court. Fed. R. Civ. P. 60(d)(3). To establish a fraud on the court, Petitioner must establish: (1) an intentional fraud; (2) by an officer of the court; (3) which is directed at the court itself; and (4) which in fact deceives the court. Herring, 424 F.3d at 386; see also Gillespie v. Janey, 527 F. App'x 120, 122 (3d Cir. 2013) (applying Herring's definition of fraud to a Rule 60(d) claim).

Petitioner alleges that the agent committed fraud on the Court when he testified at sentencing and submitted an affidavit in response to Petitioner's § 2255 Motion regarding American Express's losses. At sentencing, the agent testified that American Express had reported suffering losses of \$288,687.06 on the stolen and counterfeited American Express credit card account numbers found at Petitioner's plants for making counterfeit credit cards. In response to Petitioner's § 2255 Motion, the agent provided an affidavit repeating that American Express had advised him in April 2007 of fraud losses of \$288,687.06. At the time, the agent had not been aware, however, that after American Express had determined that it had suffered this fraud loss, it charged back \$199,877.16 of those losses to the merchant stores who had not followed the proper procedures when the fraudulent transactions were conducted. Therefore, while the total restitution loss of \$288,687.06 remained the same, the entities to which some of that restitution was owed had changed. An affidavit from American Express explaining this change in circumstances was submitted to the Court in response to Petitioner's § 2255 Motion and in support of the Government's motion to clarify restitution.<sup>1</sup>

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<sup>1</sup> American Express confirmed in its affidavit that when it was advised of the account numbers involved in Petitioner's criminal conduct, American Express determined the fraud loss to be \$288,687.06. Mot. Clarification Ex. 1, at 1, ECF No. 156.

Petitioner claims that the agent committed perjury when he testified to American Express's losses of \$288,687.06 and when he stated in his affidavit that he was not aware of American Express's petition for remission submitted to the U.S. Secret Service in 2006 seeking reimbursement for its losses. But the agent did not commit perjury. At sentencing, the agent testified to what American Express had reported to him. The agent swore in the affidavit as to what he recalled regarding American Express's petition for remission. Petitioner has offered no evidence of perjury or intentional fraud. Thus, Petitioner has not established this first element required for a claim of fraud on the Court under Rule 60(d)(3). See Herring, 424 F.3d at 386.

Petitioner, further, has not established the fourth element required for fraud on the Court--that is, that the Court was deceived. When Petitioner raised this perjury argument in his § 2255 Motion, the Court found that the agent's allegedly perjurious testimony did not change the ultimate restitution order or create a fundamental defect in Petitioner's sentencing. Petitioner must establish that the Court was deceived to prove a fraud on the Court, and the Court was not deceived. See id.

Because Petitioner has failed to establish the elements required to prove a fraud on the Court, Petitioner's motion under Rule 60(d)(3) will be denied.

B. Order Denying Petitioner's § 2255 Motion

Petitioner alleges that the Court's December 21, 2011, order denying his § 2255 Motion should be found void and set aside under Rule 60(b)(4) because the Court failed to consider certain arguments that Petitioner had raised in his § 2255 Motion. Petitioner's allegations of error by the Court are substantive claims constituting successive habeas claims that cannot be brought under Rule 60(b).

Rule 60(b) may be applied in § 2255 proceedings only to the extent that it is not inconsistent with any statutory provisions or the rules governing § 2255 proceedings. See Rules Governing § 2255 Proceedings, Rule 12; see also Gonzalez v. Crosby, 545 U.S. 524, 529 (2005).<sup>2</sup> Because of its potential for

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<sup>2</sup> In Gonzalez, the Supreme Court noted that the provisions governing second and successive petitions under § 2254 and those under § 2255, although similar, are not identical. The Supreme Court therefore technically limited its holding to § 2254 cases. 545 U.S. at 530 n.3. However, because none of the differences between the provisions in § 2254 cases and those in § 2255 cases have any bearing on the issues in the present case, the reasoning of Gonzalez should apply here.

In Pridgen v. Shannon, the Third Circuit applied the same principles that the Supreme Court later did in Gonzalez-- again in the context of a § 2254 petition by a state prisoner. 380 F.3d 721, 727 (3d Cir. 2004). However, the Third Circuit and the district courts have applied Pridgen in the § 2255 context as well. See, e.g., Tavares v. Meyers, 129 F. App'x 694, 696 (3d Cir. 2005) (per curiam); United States v. Henry, No. 06-33-02, 2014 WL 1345953, at \*1-4 (E.D. Pa. April 4, 2014); United States v. Perez, No. 94-192-01, 2013 WL 6077351, at \*1-2 (E.D. Pa. Nov. 19, 2013).

conflict with the statutory procedures established by the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Rule 60(b) has only limited applicability to post-conviction proceedings. Where, as here, a prisoner's prior motion under 28 U.S.C. § 2255 was denied, Rule 60(b) permits challenges only to the manner in which the judgment on that motion was obtained. Gonzalez, 545 U.S. at 532-33; Pridgen v. Shannon, 380 F.3d 721, 727 (3d Cir. 2004). A motion that claims error in the prisoner's conviction or sentence must be treated not as a motion for relief under Rule 60(b), but as a second or successive § 2255 motion, which may not be filed without the express permission of the Court of Appeals. See Gonzalez, 545 U.S. at 538.

In Gonzalez, the Supreme Court held that a Rule 60 motion will be considered a de facto habeas petition "if it attacks the federal court's previous resolution of a claim on the merits, since alleging that the court erred in denying habeas relief on the merits is effectively indistinguishable from alleging that the movant is, under the substantive provisions of the statutes, entitled to habeas relief." 545 U.S. at 532 (emphasis in original). Examples of such impermissible claims include allegations that newly discovered evidence support claims previously denied, arguments that a subsequent change in substantive law undermined the previous denial, and assertions that, through some form of excusable neglect,

Petitioner had failed to include a claim of constitutional error in his original motion. Id. at 530-31. Permitting such claims to be brought under Rule 60(b) would circumvent the requirement that a second or successive petition be certified by the Court of Appeals to contain either newly discovered evidence or a new rule of constitutional law made retroactive to cases on collateral review. Id. at 531-32.

A Rule 60(b) motion will also be considered a successive habeas petition if it seeks to raise a new claim not previously raised in the habeas petition. Id. at 531. Again, under the rules governing successive petitions, petitioners in these circumstances must seek approval from the Court of Appeals before filing a successive petition. Id.

Before the Supreme Court decided Gonzalez, the Court of Appeals for the Third Circuit took the same approach in Pridgen. The Pridgen Court held that permitting a petitioner to use Rule 60(b) to raise claims properly the subject of habeas motions would frustrate the purpose of AEDPA's restrictive provisions. The Pridgen Court stated:

We . . . hold that, in those instances in which the factual predicate of a petitioner's Rule 60(b) motion attacks the manner in which the earlier habeas judgment was procured and not the underlying conviction, the Rule 60(b) motion may be adjudicated on the merits. However, 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. We believe that this

rule is consonant with Congress' goal of restricting the availability of relief to habeas petitioners.

380 F.3d at 727. As stated earlier, this reasoning applies with equal force in the context of § 2255's provision on successive petitions--and with equal force to this case. See supra n.2.

Applying Gonzalez and Pridgen here shows that Petitioner's claims are not procedural, but are substantive challenges to the Court's denial of his § 2255 Motion that may not be asserted under Rule 60(b).

Petitioner first argues in his Rule 60(b) motion that this Court failed to consider the argument in his § 2255 Motion that the agent had allegedly proffered perjurious testimony. When the Court denied Petitioner's restitution claim in his § 2255 Motion, however, the Court considered this argument and denied it on the merits--finding that the agent's allegedly perjurious testimony had not changed the ultimate restitution order or created a fundamental defect in Petitioner's sentencing. In attacking this decision, Petitioner is asking the Court to reconsider his perjury argument and overturn its decision, which makes this claim a successive habeas petition that cannot be brought under Rule 60(b).<sup>3</sup>

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<sup>3</sup> Even if Petitioner's perjury argument was considered to be an attack on the manner by which the Court reached its decision, the record does not support his argument. Contrary to Petitioner's Rule 60(b) claim, the Court had considered Petitioner's allegation of perjurious testimony and rejected it.

Petitioner next argues that when the Court denied his § 2255 Motion, it failed to consider (1) his argument that algorithmic analysis invalidated some of the account numbers that the Court had used to calculate Petitioner's guideline loss amount at sentencing, and (2) his argument that some of the account numbers belonged to co-defendant Morgan and therefore should not have been used to calculate Petitioner's loss amount. Again, these are not arguments that can be raised under Rule 60(b) because Petitioner is challenging the merits of the Court's December 21, 2011, order.

When the Court denied Petitioner's § 2255 Motion, the Court recognized these arguments by Petitioner. The Court held, however, that Petitioner's counsel had not been ineffective for having failed to sufficiently raise these arguments at sentencing, given that his counsel had raised objections to and extensively argued against the Court's use of fictitious account numbers and Morgan's account numbers in calculating Petitioner's loss amount. Despite his counsel's objections and arguments, the Court had determined that both valid and fictitious account numbers should be used in calculating loss amount and that Morgan's account numbers should also be included. The Court, accordingly, found that counsel was not ineffective and denied

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Petitioner's efforts to re-raise this argument in a Rule 60(b) motion must be denied.

Petitioner's § 2255 claim. Petitioner is asking the Court in his Rule 60(b) motion to reconsider his § 2255 loss amount arguments and the Court's decision on the merits. That is not a claim that can be raised under Rule 60(b).<sup>4</sup>

Petitioner's final assertion in his Rule 60(b) motion is that the Court failed to consider the alleged absence of evidence of Petitioner's failure to report ownership of the 5359 Grays Avenue property to Probation in regard to the obstruction enhancement. In his § 2255 Motion, Petitioner objected to the Court's finding that his failure to report ownership of the Grays Avenue property in a bankruptcy filing formed the basis for the obstruction enhancement. The Court denied this claim because, at sentencing, the Court had found obstruction based on Petitioner's failure to report the Grays Avenue property to Probation, and not on his failure to report it in a bankruptcy filing. Petitioner's argument in his Rule 60(b) motion regarding Petitioner's failure to report ownership of Grays Avenue to Probation is a new argument that was not raised in the § 2255 Motion. A Rule 60(b) motion that brings a new claim for relief or new evidence in support of a claim is in substance a

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<sup>4</sup> Again, even if Petitioner were to argue that his claim is a challenge to how the Court reached its December 21, 2011, decision, the record does not support this argument. The Court did consider Petitioner's loss amount arguments and denied the claim nonetheless. Petitioner's Rule 60(b) motion must be denied.

successive habeas petition and should be treated accordingly. See Gonzalez, 545 U.S. at 531; see also, e.g., United States v. Harper, No. 10-1772, 2013 WL 5988969, at \*2 (E.D. Pa. Nov. 12, 2013). Thus, Petitioner's argument regarding his failure to report ownership of the property to Probation is a new claim that cannot be raised in a Rule 60(b) motion.<sup>5</sup>

Because Petitioner, in his motion, is either seeking that the Court reconsider its decision denying his § 2255 Motion on the merits or is raising a new substantive claim not raised earlier, Petitioner's Rule 60(b) claims constitute successive claims that cannot be brought without the prior approval of the Court of Appeals. Gonzalez, 545 U.S. at 531.

#### **IV. CONCLUSION**

For the foregoing reasons, the Court will deny Petitioner's Rule 60 motion for relief. An appropriate order follows.

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<sup>5</sup> Even if the Court were to interpret this argument as part of his § 2255 obstruction claim, the argument fails. The Court did not err in failing to consider this argument because Petitioner did not present this argument in his § 2255 motion. Thus, this argument may not be brought under Rule 60(b).

