

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

WILMER B. GAY, pro se	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA; ARLEN	:	
SPECTER; THOMAS D. WATKINS; GAETAN:	:	
J. ALFANO; LYNNE M. ABRAHAM	:	
CATHERINE L. MARSHALL; ELIZABETH	:	
J. CHAMBERS; JOSEPH CLEARY;	:	
WILLIAM O'BRIEN; GEORGE J. IVINS;	:	
JOSEPH A. MURRY; CHARLES P.	:	
MIRARCHI; EDWARD J. BLAKE; JOHN J.	:	
POSERINA; WILLIAM J. MANFREDI;	:	
ZYGMONT A. PINES; HOWARD HOLMES;	:	
JOHN W. PERSON; DAVID A. SZEWCZAK;	:	
C.R. HOSTUTLE; JOSEPH H. EVERS;	:	
ALBERTA COPELAND; RUSSEL M. NIGRO;	:	
JOSEPH A. DEL SOLE; JAMES GARDEN	:	
COLINS; MIKE D. FISHER; FRANCIS R.	:	
FILIPI; DALINDA E. CARREOR; PATRICK J.:	:	
MCMONAGLE; SUSAN J. FORNEY;	:	
JEFFREY A. BEARD; SARAH B.	:	
VANDENBRAAK; THOMAS JAMES;	:	
KENNETH D. KYLER; DIANA G. BANEY;	:	
PAUL WEAVERLING; DONALD ELLIOTT;	:	
WILT; STEELE; HAROLD L. RANDOLPH;	:	
ROBERT B. MOZENTER; JOEL P.	:	
TRIGIANI; ROBERT P. WILLIAMS	:	
Defendants	:	NO. 03-CV-5358

Norma L. Shapiro, S.J.

September 19, 2005

MEMORANDUM AND ORDER

Plaintiff Wilmer B. Gay, alleging civil rights violations under 42 U.S.C. §§ 1983, 1985(2), 1986, and 1988, filed an action against the City of Philadelphia and 42 individual

defendants. Presently before the court is a motion for reconsideration of the court's decision dismissing all of plaintiff's claims with prejudice. Gay v. City of Philadelphia, No. 03-CV-5358, 2005 WL 1844407 (E.D. Pa. Aug. 2d, 2005). The motion for reconsideration will be denied.

BACKGROUND

Plaintiff Wilmer Gay, *pro se*, is a prisoner at the State Correctional Institution at Huntingdon. He was convicted of first degree murder in April, 1972 and sentenced to life imprisonment. His conviction has been upheld upon numerous challenges.¹

Plaintiff has filed a complaint, an amended complaint and a second amended complaint alleging civil rights violations against 43 defendants under 42 U.S.C. §§ 1983, 1985(2), 1986, and 1988. On August 2, 2005, this Court granted defendants' joint motions to dismiss all counts under Rule 12(b)(6). Gay has now filed a Motion for Reconsideration pursuant to F.R.C.P. Rules 59(e) and 60(b).

DISCUSSION

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985); American & Foreign Ins. Co. v. Royal Ins. Co. of America, Inc., No. Civ. A. 97-3349,

¹ Plaintiff pursued a direct appeal to state court (Commonwealth v. Gay, 330 A.2d 843 (Pa. 1975)); attacked his sentence in state court in post-conviction hearings (Commonwealth v. Gay, 413 A.2d 675 (Pa. 1980)); filed four petitions for federal *habeas corpus* relief (Gay v. Dragovich, No. 97-2614 (E.D. Pa. March 10, 1998); Gay v. Petsock, No. 88-4433, 1990 WL 26683 (E.D. Pa. March 12, 1990); Gay v. Fulcomber, No. 85-0985, 1985 U.S. Dist. LEXIS 17319 (E.D. Pa. July 31, 1985); In re Gay, 510 U.S. 1108 (1994)); and filed several civil rights actions (e.g. Gay v. Lehman, et al., No. 83-2089, 579 F. Supp. 1019 (E.D. Pa. 1984), aff'd, 770 F.2d 1069 (3d Cir. 1985); Gay v. Elizabeth Chambers, et al., No. 89-0586, 1989 WL 14071, at *1 (E.D. Pa. Feb. 17, 1989); Gay v. Watkins, 573 F. Supp. 706 (E.D. Pa. 1983)).

1998 WL 966008, at *2 (E.D. Pa. Dec. 22, 1998) (Shapiro, J.), aff'd, 210 F.3d 357 (3d Cir. 2000) (same). "Because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly." Cont'l Cas. Co. v. Diversified Indus., Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995). Courts will reconsider an issue only when: (1) there has been an intervening change in the controlling law; (2) new evidence has become available; or (3) there is a need to correct a clear error or prevent manifest injustice. Haymond v. Lundy, 205 F. Supp. 2d 390, 395 (E.D. Pa. 2002) (Shapiro, J.). "Motions for reconsideration are not to be used to reargue or relitigate matters already decided." Id.

The arguments Gay raises in his motion to reconsider have no merit and merely attempt to relitigate the issues decided in this Court's Order of August 2, 2005. No new evidence has come to light; the controlling law has not changed; and there is no need to correct clear error or prevent manifest injustice.

The only issue that should be addressed briefly is the dismissal of Gay's claims against defendant Joel P. Trigiani as barred by the statute of limitations. Trigiani was appointed by the Philadelphia Court of Common Pleas to represent Gay in a collateral appeal of his life sentence for murder. The unsuccessful appeal was concluded in 1983. In his complaint, Gay alleged a variety of civil rights violations by the prosecutors, judges, and defense attorneys who participated in that proceeding.

Gay correctly points out that Trigiani did not raise a statute of limitations defense in his motion to dismiss. The defense was raised by Trigiani's co-defendant, former Assistant District Attorney Gaetan Alfano, with respect to the same events. See Def. Abraham et al.'s Mot. to Dismiss Second Amended Complaint at 3 (Paper #64). In Trigiani's motion to dismiss, he

expressly moved to join in the legal arguments presented in other defendants' motions, and incorporated the statute of limitations in his motion. Def. Trigiani's Motion to Dismiss Second Amended Complaint at 1 (Paper # 63). Trigiani's method of pleading the expiration of the statute of limitations on claims based on the events of 1980-1983 does not constitute a reason for amending the order dismissing Gay's claims as to Trigiani.¹

CONCLUSION

There being no intervening change in controlling law or newly available evidence, in the absence of a need to correct a clear error or prevent manifest injustice, Gay's motion for reconsideration will be denied.

An appropriate Order follows.

¹ In any event, Gay fails to state a claim against Trigiani because Trigiani, a public defender appointed by the Philadelphia Court of Common Pleas to represent Gay in his collateral appeal, is not a state actor under Section 1983. See Polk County v. Dodson, 454 U.S. 312, 325 (1981) (a public defender or court-appointed criminal defense lawyer "does not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding"); Limehouse v. Delaware, 2005 WL 1625233 at *1 n.2 (3d Cir. July 12, 2005) (same).

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TRIGIANI; ROBERT P. WILLIAMS	:	
Defendants	:	NO. 03-CV-5358

Norma L. Shapiro, S.J.

ORDER

AND NOW, this 19th day of September 2005, upon consideration of plaintiff's Motion for Reconsideration (Paper # 108), Commonwealth defendants' joint response thereto (Paper # 109),

and plaintiff's Response in Opposition (Paper #110), upon a determination that there is no new evidence or change in controlling law, and no need to correct a manifest error of law or fact to prevent a manifest injustice; it is hereby **ORDERED** that plaintiff's Motion for Reconsideration of the Court's August 2, 2005 Order is **DENIED**.

The Clerk of Court is directed to mark this case as closed.

/s/ Norma L. Shapiro

Norma L. Shapiro, S.J.