

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

**UNITED STATES OF AMERICA,**

**v.**

**ROBERT BURKE,**

*Defendant.*

**CRIMINAL ACTION**

**NO. 92-268**

**PAPPERT, J.**

**September 15, 2017**

**MEMORANDUM**

Federal inmate Robert Burke has filed a Motion pursuant to Federal Rules of Civil Procedure 60(b)(4) and/or 60(d) asking the Court to grant him an evidentiary hearing and set aside the denial of one of his prior Rule 60(d) motions. (ECF No. 243.) Burke has also filed motions seeking: (1) a civil docket number on his Rule 60(b)(4) Motion (ECF No. 246); (2) to unseal documents (ECF No. 249); (3) to compel (ECF No. 257); and (4) for summary judgment on his 60(b)(4) Motion (ECF No. 259). Most of the relief Burke seeks has been previously denied in the district court and court of appeals. For these reasons and the additional reasons that follow, Burke's Motions are all denied.

## I.

Burke, a former lawyer, was convicted by a jury in 1993 of the murder of federal witness Donna Willard and other related charges. He was sentenced to life in prison and concurrent terms of 60 and 120 months. While incarcerated, Burke has maintained an active, albeit unsuccessful, litigation practice. He appealed his conviction and sentence to the Third Circuit Court of Appeals, which affirmed on July 20, 1994. *See United States v. Burke*, 31 F.3d 1174 (3d Cir. 1994). On January 17, 1995, the Supreme Court denied Burke's petition for writ of certiorari. *See Burke v. United States*, 513 U.S. 1100 (1995). Burke has since filed numerous post-conviction petitions, all of which have been denied, with the Third Circuit affirming all rulings appealed by Burke.<sup>1</sup>

## A.

### i.

In his Rule 60(b)(4) Motion, Burke asks the Court to set aside the denial of a prior Rule 60(d) motion and request for an evidentiary hearing. Burke alleges that his due process rights were violated under Rule 60(b)(4) when these two requests were

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<sup>1</sup> *See Burke v. United States*, No. 96-3249, 1996 WL 648452 (E.D. Pa. Nov. 8, 1996) (denying Burke's 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence), *aff'd*, 133 F.3d 911 (3d Cir. 1997); *Burke v. United States*, No. 96-3249, 1999 WL 1065217 (E.D. Pa. Nov. 23, 1999) (denying Burke's motion for relief from judgment in a criminal case or, in the alternative, for relief from the Order denying his Section 2255 motion, *aff'd*, No. 00-1323 (3d Cir. May 8, 2001); *Burke v. United States*, No. 96-3249, 2005 WL 2850354 (E.D. Pa. Oct. 28, 2005) (denying Burke's *Hazel-Atlas* action because it failed to present clear, unequivocal, and convincing evidence that fraud was perpetrated on the court by an officer of the court), *aff'd*, 193 Fed. Appx. 143 (3d Cir. 2006); *United States v. Burke*, No. 92-268-1, 2008 WL 901683 (E.D. Pa. Apr. 2, 2008), *aff'd*, 321 Fed. Appx. 125 (3d Cir. 2009) (affirming the denial of successive motion to vacate order denying § 2255 motion for failing to present clear, unequivocal and convincing evidence of an intentional fraud on the court); *In re Burke*, 389 F. App'x 136 (3d Cir. 2010) (denying Burke's writ of mandamus seeking to compel Judge William H. Yohn, Jr., to recuse himself from any future proceedings); *Burke v. United States*, No. 96-3249, 2014 WL 3600467 (E.D. Pa. July 21, 2014) (denying another Rule 60(d) motion alleging fraud on the court); *United States v. Burke*, No. 96-3249, 2014 WL 4230759 (E.D. Pa. Aug. 26, 2014) (denying Burke's Rule 59(e) motion to alter or amend the court's prior order on his Rule 60(d) Motion seeking reversal of the 1996 denial of a prior § 2255 motion).

denied. Rule 60(b)(4) provides that a court “may relieve a party or its legal representative from a final judgment, order, or proceeding” if “the judgment is void.” Fed.R.Civ.P. 60(b)(4). A judgment is “void” under Rule 60(b)(4) not simply because it was erroneous, but rather “only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law.” *Id.*; *see also* 11 Wright & Miller, Federal Practice and Procedure: Civil § 2862 (3d ed. 1998).

Regardless of how Burke has labeled it, his Rule 60(b)(4) Motion is in substance the same as many of the motions which have already been denied by the district court and affirmed on appeal. *See supra* note 1. As Burke acknowledges in referring to his prior failed efforts, his Rule 60(b)(4) Motion “alleges defects in the integrity of the fraud on the Court/Rule 60(d) motion only,” does “not alleg[e] any new grounds for relief,” and his sole request for relief is that this Court “vacate the judgment and order an evidentiary hearing upon the issues set forth in Petitioner’s Fraud on the Court/Rule 60(d) Motion.” (Rule 60(b)(4) Motion for Previously Filed Independent Action for Fraud on the Court and/or Rule 60(d) ¶¶ 68–69, 75, ECF No. 243) These issues have already been litigated and decided, and Burke fails to offer any new information that would support reconsidering those prior decisions.<sup>2</sup>

Even were the Court to consider Burke’s Rule 60(b)(4) Motion on the merits, there has been no violation of his due process rights. The prior denial of Burke’s Rule 60(d) Motion did not result in the denial of due process under Rule 60(b)(4) because

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<sup>2</sup> For discussion on the previous denial of Burke’s 60(d) Motion, *see Burke*, 2014 WL 3600467, at \*5. For discussion on the previous denial of his request for an evidentiary hearing, *see Burke*, 2014 WL 4230759, at \*1.

Burke’s claim 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*, 2014 WL 4230759, at \*1. The denial of his prior request for an evidentiary hearing did not deprive Burke of his due process rights under Rule 60(b)(4) either, since “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); *see also Burke*, 2014 WL 4230759 at \*1 (rejecting prior due process claim Burke raised under Rule 59(e)).<sup>3</sup> For these reasons, neither the denial of Burke’s Rule 60(d) Motion nor the denial of an evidentiary hearing violated his due process rights under Rule 60(b)(4).

**ii.**

Burke’s Motion to Unseal Documents (ECF No. 249) seeks access to documents docketed in his criminal prosecution, specifically ECF Nos. 47, 191, 193, 198, 213 and 214. The motion is denied as moot with respect to ECF Nos. 191, 193, 198, 213 and 214 because each of these documents is already public. (Def. Resp. to Mot., at 23, ECF No. 254.) The motion is denied with respect to ECF No. 47 because Burke provides no reason to support his request. His motion is instead replete with conclusory legal

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<sup>3</sup> Burke cast this Motion as a Rule 60(b)(4) Motion, which is dismissed for the reasons articulated above. Both parties, however, address whether this “*Hazel-Atlas* Motion” should be treated as a second or successive habeas petition subject to the restrictions imposed by 28 U.S.C. § 2255 and AEDPA. The Third Circuit has yet to decide in a precedential opinion whether a post-conviction motion under *Hazel-Atlas* should be treated as a § 2255 motion. *See United States v. Barbosa*, 239 F. App’x 759, 760–61 (3d Cir. 2007) (*per curiam*) (noting lack of precedential authority on this issue). To the extent it is treated as a successive § 2255 motion, it has not been approved by the Third Circuit Court of Appeals and this Court is without jurisdiction to consider it. Even if the restrictions imposed by § 2255 do not apply to *Hazel-Atlas* claims, however, it fails to “present clear, unequivocal, and convincing evidence that fraud was perpetrated upon the court by an officer of the court.” *Burke*, 2005 WL 2850354 at \*1; *see also Burke*, 321 F. App’x 125 at 126 (again denying Burke’s *Hazel-Atlas* claim).

Because Burke’s Rule 60(b)(4) Motion is denied, Burke’s Motion for a Civil Docket Number (ECF No. 246) is denied as moot.

statements in lieu of any factual averments or relevant analysis. Though the right of access to documents in criminal proceedings is entrenched, it is not absolute. *See Bank of America National Trust and Savings Ass'n v. Hotel Rittenhouse Associates*, 800 F.2d 339, 344 (3d Cir. 1986). “Every court has supervisory power over its own records and files, and access [appropriately] has been denied where court files might have become a vehicle for improper purposes.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978). Though there is no comprehensive definition of the common-law right of access to documents, the “decision as to access is one best left to the sound discretion of the trial court, a discretion exercised in light of the relevant facts and circumstances of the particular case.” *Id.* This case’s tortured history and the frivolity of most, if not all, of Burke’s efforts provide ample support for the Court, in its discretion, to deny Burke’s request.

### iii.

Burke’s Motion to Compel (ECF No. 257) seeks the production of documents containing information pertaining to James David Louie, a cooperating witness in Burke’s criminal prosecution. The Motion seeks information about any prison or jail in which Louie was incarcerated, and the date and location of every witness protection location that Louie was placed, among other requests. Burke provides no reason for his need for this information, and in any event, has had numerous opportunities to present any arguments with respect to Mr. Louie in prior proceedings and has been rejected at every turn. *See Burke*, 2014 WL 3600467 at \*8 (rejecting Burke’s argument that Louie’s testimony supported a claim for fraud on the court); *Burke*, 193 Fed.Appx. 143 at 144 (explaining that alleged statements directed by the government to Louie to

testify against Burke were insufficient “to implicate the prosecuting officials specifically”).

**iv.**

Burke’s Motion for Summary Judgment on his Rule 60(b)(4) Motion (ECF No. 259) is denied as moot given that the Court has denied the Rule 60(b)(4) Motion. In any event, Burke based his Motion for Summary Judgment on 122 unanswered requests for admission pursuant to Federal Rule of Civil Procedure 36, a civil litigation discovery device. This is not Burke’s first attempt to employ this tactic which, like his other efforts, has also been rejected by prior courts. *See Burke*, 2014 WL 4230759 at \*1 (finding that the government had not admitted any of the “facts” alleged by Burke in 121 unanswered requests for admission submitted to the government). As Judge Yohn explained in a prior opinion, Rule 36 is a “pre-trial, civil litigation discovery device that is not available to a post-trial, criminal defendant such as Burke.” Similarly, summary judgment under Federal Rule of Civil Procedure 56 is also a “pre-trial, civil litigation device.” *Id.* Because Burke is a post-trial criminal defendant, he “has no entitlement to file the motion contemplated by Rule 56.” *Id.*

An appropriate order follows.

BY THE COURT:

*/s/ Gerald J. Pappert*

GERALD J. PAPPERT, J.