

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

UNITED STATES OF AMERICA	:	CIVIL ACTION
	:	
v.	:	
	:	
REAL PROPERTY LOCATED AT	:	
1323 SOUTH 10TH STREET,	:	
PHILADELPHIA, PA, and	:	
ALL APPURTENANCES and IMPROVEMENTS	:	NO. 91-5848

MEMORANDUM and ORDER

Norma L. Shapiro, J.

August 11, 1998

Joseph Franklin Crump ("Crump") has filed a motion for relief from a final judgment of forfeiture. For the reasons stated below, Crump's motion will be denied.

FACTS

On October 14, 1992, a grand jury indicted claimant Crump on charges of drug trafficking and firearms violations (Criminal No. 92-593). Count One charged Crump with conspiracy to possess a controlled substance, phenyl-2-propanone ("P2P"), with intent to distribute; Count Five sought criminal forfeiture of the property that Crump had used in connection with the drug trafficking violation of Count One. Count Five averred that Crump's interest in the real property located at 1323 South 10th Street, Philadelphia, Pennsylvania, was subject to forfeiture.

Crump executed a Guilty Plea agreement with the government on June 29, 1993. The Guilty Plea agreement identified Crump's interest in 1323 South 10th Street as property subject to

forfeiture under Count Five. Honorable John P. Fullam ("Judge Fullam") accepted the guilty plea after a Rule 11 colloquy.

On November 23, 1993, Judge Fullam sentenced Crump to a term of imprisonment of 100 months and entered a Judgment of Forfeiture of Crump's interest in 1323 South 10th Street. Crump did not object to the forfeiture of this interest and successfully argued against imposition of a fine in addition to the term of imprisonment because of the forfeiture.

Crump did not assert any challenge to the forfeiture in appealing his sentence. On June 27, 1994, the United States Court of Appeals for the Third Circuit affirmed Crump's sentence.

On June 6, 1996, Crump, seeking to vacate his sentence, filed a petition for relief under 28 U.S.C. § 2255. Crump asserted that his guilty plea was not voluntary because Judge Fullam did not explain to him during the Rule 11 colloquy that Crump would forfeit his interest in 1323 South 10th Street by pleading guilty.

Judge Fullam, denying Crump's petition, found that the guilty plea was voluntary and made with knowledge of the possible forfeiture. The Court of Appeals denied Crump's request for a certificate of appealability because Crump "failed to make a substantial showing of the denial of a constitutional right." February 19, 1997 Order, Civil Action No. 96-2014.

After Crump's 1992 indictment, the government had sought civil forfeiture of 1323 South 10th Street on the facts constituting Count One of the criminal indictment. The civil action was assigned to this judge who entered an order of civil forfeiture for the same property on a summary judgment motion of the government following Crump's sentencing.

Crump now seeks relief from the final civil forfeiture judgment. Crump alleges the court relied upon a constitutionally deficient guilty plea; Crump avers the guilty plea was involuntary because Judge Fullam did not explain that Crump would lose his interest in 1323 South 10th Street by pleading guilty, and the court should correct the error under Rule 60(b)(6).

#### **DISCUSSION**

A civil judgment is presumed to be final. In certain circumstances, however, "[o]n motion and upon such terms as are just, the court may relieve a party ... from a final judgment, order or proceeding for ... (1) mistake, inadvertence, surprise, or excusable neglect; ... or (6) any ... reason justifying relief from the operation of the judgment." Fed. R. Civ. P. 60(b)(6); see Binker v. Pennsylvania, 977 F.2d 738, 744 (3d Cir. 1992).

A district court has discretion to determine whether such relief is warranted. See Torres v. Chater, 125 F.3d 166 (3d Cir. 1997). A party moving under Rule 60(b) bears a heavy burden of

proof that extraordinary circumstances are present to justify the relief. See Bohus v. Beloff, 950 F.2d 919, 930 (3d Cir. 1991).

"The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken." Fed. R. Civ. P. 60(b); see Ackerman v. United States, 340 U.S. 193, 197 (1950); Gambocz v. Ellmyer, 438 F.2d 915, 917 (3d Cir.), cert. denied, 403 U.S. 919 (1971). "[S]ection (6) may not be used as a catchall to avoid the one-year limitation." Gambocz, 438 F.2d at 917.

Crump, filing his motion under Rule 60(b)(6), argues the court has jurisdiction because of the mistake made during the guilty plea colloquy. Because Rule 60(b)(1) expressly states that the court may relieve a party from a final judgment for reason of mistake, that section may be more appropriate. See id. As an alleged mistake, Crump's claim is barred by the one-year statute of limitations under Rule 60 (6)(1). See Fed. R. Civ. P. 60(b). However, even if Crump's claim is liberally construed under Rule 60(b)(6), the motion must be filed within a "reasonable time." Id. Crump waited four years before seeking relief and offers no explanation for the delay. A four year delay is not reasonable; the untimely motion purports to re-litigate the legality of the guilty plea when the issue has already been decided by the district court and a certificate of

appealability has been denied. See U.S. v. Dansbury, 1996 WL 592645 (E.D. Pa. Oct. 15, 1996) (five years was not a reasonable period of time).<sup>1</sup>

Crump's motion is barred by collateral estoppel, or issue preclusion; a party may not relitigate the same issue in a separate proceeding. See Montana v. United States, 440 U.S. 147, 153 (1979). Four factors apply to issue preclusion: (1) whether the identical issue was previously adjudicated; (2) whether the issue was actually litigated; (3) whether the previous determination was necessary to the decision; and (4) whether the party being precluded from relitigating the issue was fully represented in the prior action. See Raytech Corp. v. White, 54 F.3d 187, 190 (3d Cir.), cert. denied, 516 U.S. 914 (1995); United Industrial Workers v. Virgin Islands, 987 F.2d 162, 169 (3d Cir. 1993).

Crump has already litigated whether or not the guilty plea was voluntary in his motion to vacate his sentence pursuant to 28 U.S.C. § 2255. The district court decided the guilty plea was valid, and the Court of Appeals refused to allow an appeal for lack of a substantial showing of a denial of a constitutional right. Crump may not relitigate this issue in an independent

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<sup>1</sup>Crump's property was forfeited in the civil action under 21 U.S.C. § 881; the property was also forfeited under 21 U.S.C. § 853 in the criminal action. The criminal forfeiture judgment is a final, non-appealable order. Even if Crump obtained relief in this action under Rule 60(b)(6), the property would still be subject to the criminal forfeiture order.

civil proceeding. See U.S. v. Three Tracts of Property, 994 F.2d 287, 290 (6th Cir. 1993).

Even if the motion were timely and not barred by collateral estoppel, Crump's guilty plea has been held voluntary and constitutional not only by the Court of Appeals on direct review, but also in the § 2255 proceedings and subsequent denial of his appeal.

Judge Fullam conducted an adequate Rule 11 colloquy at the time of Crump's plea; Crump understood the charges to which he plead guilty. The court found "defendant cannot be heard to say that he was unaware that his plea of guilty could result in forfeiture of his residence, or that his counsel was inadequate for failing to advise him of that fact." October 23, 1996 Memorandum and Order, Civil Action No. 96-4194. The forfeiture was part of the guilty plea agreement explained to Crump by his attorney; the guilty plea and the terms of the plea agreement were entered into knowingly and voluntarily.

Crump's motion is time-barred and barred by issue preclusion. The guilty plea upon which this court relied in entering judgment of civil forfeiture was voluntary and constitutional. Crump's Rule 60 motion will be denied.

An appropriate Order follows.

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AND NOW, this 11th day of August, 1998, upon consideration of claimant Joseph Franklin Crump's ("Crump") motion for relief from judgment pursuant to Fed. R. Civ. P. 60(b), the government's response thereto, Crump's traverse to the government's response, and in accordance with the attached Memorandum, it is hereby **ORDERED** that Crump's motion is **DENIED**.

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Norma L. Shapiro, J.