

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

AUGUSTUS YOUNG,	:	
	:	
Petitioner	:	CIVIL ACTION
	:	
v.	:	
	:	
DAVID DIGUGLIELMO, et al.,	:	
	:	
Respondents	:	NO. 04-CV-4665
	:	

MEMORANDUM

Petitioner filed this Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60(b), alleging (1) that this court mistakenly transferred his habeas petition to the Third Circuit Court of Appeals as a second or successive petition and (2) that new evidence reveals that his underlying conviction was obtained by a fraud upon the court. For the reasons set forth below, I will deny his motion.

In an order entered on December 9, 2004, this court transferred Petitioner’s habeas petition to the Third Circuit as a successive petition. Young v. Diguglielmo, No. 04-CV-4665 (E.D. Pa. Dec. 7, 2004) (vacating prior order and transferring petition). Having done so, this court no longer has jurisdiction to decide this matter. See, e.g., Database Am., Inc. V. Bellsouth Adver. & Publ’g Corp., 825 F. Supp. 1216, 1221 (D.N.J. 1993) (“The rule is well established that a transferor court loses jurisdiction to reconsider its order to transfer once the records in the transferred action are physically transferred to and received by the transferee court.”) (citations omitted).

However, even assuming *arguendo* that this court did have authority to reconsider its

prior decision, Petitioner is not entitled to relief pursuant to Federal Rule of Civil Procedure

60(b). Rule 60(b) provides:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void....or (6) any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. Proc. 60(b). As an initial matter, a transfer order is not "final" within the meaning of Rule 60(b). See, e.g., McCreary Tire & Rubber Co. v. Ceat S.P.A., 501 F.2d 1032 (3d Cir. 1974) (finding that an order to transfer pursuant to venue provision, 28 U.S.C. 1404, was interlocutory and unappealable). Moreover, 60(b) was designed to address "extraordinary, and special circumstances," and legal error alone does not warrant its application. Pridgen v. Shannon, 380 F.3d 721, 728 (3d Cir. 2004). Petitioner's first claim is that this court "mistakenly" transferred his habeas petition as second or successive and that he is therefore entitled to 60(b) relief. This court's decision was based upon my finding that Judge Katz dismissed two of Petitioner's six claims on the merits, and found that the remaining four claims were not only unexhausted, but also procedurally defaulted, thus rendering his subsequent petition an unauthorized successive petition. Petitioner's claim, therefore, is actually based on a contention of legal error, not mistake. His remedy in this court would be through a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e). Even construing his motion as such, the motion is time barred because it was not filed within ten days of the judgment. Fed. R. Civ. Proc. 59(e) (providing that time to file motion to alter or amend judgment is ten days).

Finally, Petitioner's claim that new evidence reveals that his conviction was secured by a fraud on the court is, in essence, a collateral attack on the underlying conviction, not a challenge to the habeas judgment. In Pridgen, 380 F.3d at 727, the Third Circuit held that "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." Therefore, without authorization from the Third Circuit, this court may not review this claim. 28 U.S.C. § 2244(b)(3)(A).

For the foregoing reasons, I will deny Petitioner's motion. An appropriate order follows.

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

AUGUSTUS YOUNG,	:	
	:	
Petitioner	:	CIVIL ACTION
	:	
v.	:	
	:	
DAVID DIGUGLIELMO, et al.,	:	
	:	
Respondents	:	
	:	NO. 04-CV-4665

ORDER

AND NOW, this day of January, 2005, upon consideration of Petitioner's Motion for Relief of Judgment to Re-Open Pursuant to Federal Rule of Civil Procedure 60(b), it is hereby ordered that said motion is DENIED.

LAWRENCE F. STENGEL, J.