

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

LEANDER GEORGE DAVIS : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
SUPERINTENDENT KYLER, et al., : NO. 02-7998
Defendants. :
 :

MEMORANDUM AND ORDER

Fullam, Sr. J.

March 22 , 2005

Petitioner is a state prisoner currently incarcerated at the State Correctional Institute in Huntington, Pennsylvania. On July 7, 2003, this Court adopted the Report and Recommendation of the Magistrate Judge denying his petition for *habeas* relief. Petitioner has now filed a motion for relief from judgment alleging numerous grievances. Because petitioner's motion was filed well beyond the one year time period prescribed by Fed. R. Civ. P. 60(b), the motion will be denied.

In 1992, following a jury trial in the Court of Common Pleas of Philadelphia County, petitioner was convicted of second degree murder, three counts of robbery, two counts of burglary, aggravated assault, violations of the Uniform Firearms Act, and criminal conspiracy. He received a sentence of life imprisonment.

Petitioner filed a timely notice of appeal to the Pennsylvania Superior Court, which affirmed the sentence on July

21, 1995. Petitioner's subsequent petition for allowance of appeal was denied. On July 10, 1997, Petitioner filed an appeal under Pennsylvania's Post Conviction Relief Act, 42 Pa. C.S.A. § 9541, which was denied. That order was then affirmed by the Pennsylvania Superior Court on February 12, 2002.

Thereafter, petitioner filed a *habeas* petition alleging violations of his 6th Amendment right to counsel. Specifically, petitioner alleged that his trial counsel failed to object to jury instructions and neglected to call alibi and character witnesses. Petitioner also argued that his appellate counsel was similarly negligent. As fully explained in the Magistrate Judge's Report and Recommendation, petitioners' claims were dismissed either because they did not merit *habeas* relief or were procedurally defaulted.

Petitioner's current motion alleges, over 49 pages, that a fraud was perpetrated upon the Court such that the "judicial machinery could not perform in [the] usual manner its impartial task of adjudging cases. . ." He alleges that he was falsely accused of the charges brought against him and that a criminal conspiracy existed between petitioner's privately retained attorney, the district attorney's office, and the trial judge. Petitioner asserts that the goal of this conspiracy was to allow for petitioner's improper conviction, and that it was carried out

through the improper submission of documents and judicial ignorance of pertinent facts.

Fed. R. Civ. P. 60(b)(3) states that a court may grant a motion for relief from judgment upon a showing of fraud or misrepresentation made by an adverse party. However, such a claim must be brought "not more than one year after judgment, order, or proceeding was entered or taken."

In this case, the Court adopted the Report and Recommendation on July 7, 2003. The instant motion was filed on February 22, 2005, clearly beyond the one year time period allowed by the Rule. Thus, since petitioner's claims have no conceivable merit and were not brought within the appropriate time period, the motion for relief from judgment is denied.

An Order follows.

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

LEANDER GEORGE DAVIS	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
SUPERINTENDENT KYLER, et al.,	:	NO. 02-7998
Defendants.	:	
	:	

ORDER

AND NOW, this 22nd day of March 2005, upon consideration of Petitioner's motion for relief from judgment, IT is ORDERED that the motion is DENIED.

/s/ John P. Fullam
John P. Fullam, Sr. J.