

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

ARTHUR R. WILLIAMS, JR.

v.

DONALD T. VAUGHN, et. al.,

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CIVIL ACTION

NO. 02-1077

Memorandum and Order

Presently before the court is petitioner Arthur R. Williams, Jr.’s motion to reopen his case pursuant to Federal Rule of Civil Procedure 60(b) or pursuant to *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944). A Pennsylvania state prisoner, Williams is not a stranger to this court. On February 28, 2002, he filed his first petition for a writ of habeas corpus under 28 U.S.C. § 2254. I denied that petition on February 26, 2003, and the United States Court of Appeals for the Third Circuit denied his request for a certificate of appealability on July 31, 2003. Because Williams is filing an unauthorized successive habeas petition attempting to collaterally attack a state court judgment under Rule 60(b)(6), and because his claim under the *Hazel-Atlas* doctrine is unavailing, I will also deny his present motion.¹

In his motions, Williams argues that he is actually innocent, and that under Fed. R. Civ. P. 60(b)(6), this requires relief from the operation of the state court judgment. However, the Third Circuit has held that a state prisoner may not circumvent the rules of the Antiterrorism and

¹Petitioner has also filed a motion for discovery which will be dismissed as moot.

Effective Death Penalty Act (“AEDPA”) by couching an unauthorized successive habeas petition as a motion under Rule 60(b).² *Pridgen v. Shannon*, 380 F.3d 721, 727 (3d Cir. 2004). In determining whether a state prisoner’s Rule 60(b) motion should be regarded as an unauthorized successive habeas petition, the Third Circuit has stated:

In instances in which the factual predicate of a petitioner’s Rule 60(b) motion attacks the manner in which the earlier habeas judgment was procured and not the underlying conviction, the Rule 60(b) motion may be adjudicated on the merits. However, 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.

Id. at 727. In sum, if the petitioner seeks to relitigate issues already decided by the district court on habeas, or pose new claims that would have been cognizable on federal habeas review, the Rule 60(b) motion constitutes a successive habeas petition. *Id.* at 726. Under 28 U.S.C. § 2244(b)(3)(A), a district court may not entertain these successive petitions unless the habeas petitioner obtains “an order from the appropriate court of appeals authorizing the district court to consider the motion.” *See Christy v. Horn*, 115 F.3d 201, 208 (3d Cir. 1997).

In this case, Williams does not make any allegation that the earlier habeas judgment was somehow improperly procured or fraudulent. Rather, he asserts that he is actually innocent, that his attorney committed willful misconduct by failing to call an alibi witness in the state trial, and that the Commonwealth failed to disclose the financial assistance it provided to one of its witnesses, Robert Alexander. These are classic successive petition claims because the factual predicates of his claims attack the underlying state court conviction. *Pridgen*, 380 F.3d at 727.

²AEDPA specifically prohibits state prisoners from filing second or successive habeas petitions, subject to very specific exceptions and procedures articulated in the statute. *See* 28 U.S.C. § 2244(b). None of these procedures has been met here.

Williams's motion under Rule 60(b)(6) is therefore a successive petition subject to the restrictions of § 2244(b)(3)(A). As Williams has not obtained an order from the Third Circuit authorizing this court to consider his motion, his Rule 60(b) motion will be denied.

Petitioner also appears to bring an independent action alleging that the *Hazel-Atlas* doctrine permits this court to equitably review the state court judgment. He argues that this is possible because the Commonwealth committed fraud on the state court, specifically arguing they failed to disclose the assistance it provided to Alexander. I disagree. It is true that under *Hazel-Atlas*, a court has the ability to use its equitable powers to vacate judgments obtained through the commission of fraud upon the court.³ 322 U.S. at 244; *Universal Oil Products Co. v. Root Refinery Co.*, 328 U.S. 575, 580 (1946). Furthermore, the Third Circuit has not yet ruled on whether a federal district court can equitably reconsider fraudulently-obtained state court judgments under *Hazel-Atlas*. However, other circuit courts, which have considered state prisoners' motions under *Hazel-Atlas*, have held that a federal district court may only exercise its equitable powers where: "the fraud was perpetrated on the federal court and resulted in the denial

³The *Hazel-Atlas* doctrine is based on a savings clause in Fed. R. Civ. P. 60(b), which specifically provides for the continuing existence of this equitable power outside and independent of that rule. See generally Charles Alan Wright et al., *Federal Practice and Procedure* § 2870 (2d ed. 1995). There is no statute of limitations for bringing a fraud upon the court claim. *Hazel-Atlas*, 322 U.S. at 244. As a circuit court has explained, "a decision produced by fraud on the court is not in essence a decision at all and never becomes final." *Kenner v. Comm'r of Internal Revenue*, 387 F.2d 689, 691 (7th Cir. 1968).

In addition, while Rule 60(b) may advert to the existence of the court's power to set aside a decision when fraud has been perpetrated against it, that power exists independently of 60(b). As the Third Circuit has stated, in describing a fraud on the court action: "Initially, we must be clear that we are not here reviewing a Rule 60(b) motion. . . . It follows that an independent action alleging fraud upon the court is completely distinct from a motion under Rule 60(b)." *Herring v. United States*, 424 F.3d 384 (3d Cir. 2005) (internal citation omitted).

of federal habeas relief, not where the fraud was perpetrated on the state court.” *Gonzalez v. Secretary for the Department of Corrections*, 366 F.3d 1253, 1285 (11th Cir. 2004); *Fierro v. Johnson*, 197 F.3d 147, 153-54 (5th Cir. 1999) (stating a federal court can only review federal court judgments under *Hazel-Atlas*, not state court judgments). *See also Taft v. Donellan Jerome, Inc.*, 407 F.2d 807, 809 (7th Cir. 1969) (holding that the specific court which is the victim of the fraud is the only court that can reconsider its own judgments). Because the district court cannot reconsider state court proceedings under *Hazel-Atlas*, and Williams only asserts that there was fraud upon the state court, Williams’s motion is unavailing.

Finally, even if the Third Circuit were to rule that I can reconsider the state court judgment under *Hazel-Atlas*, or that the fraud upon the state court tainted the federal habeas decision, Williams’s motion would still be denied. A fraud upon the court action must satisfy a very demanding standard in order to justify upsetting the finality of the challenged judgment. In order to prove fraud upon the court, the petitioner must present clear, unequivocal, and convincing evidence of a “deliberately planned and carefully executed scheme” by a court officer. *Hazel-Atlas*, 322 U.S. at 245; *see also Herring v. United States*, 424 F.3d 384, 386-387 (3d Cir. 2005). Here, Williams’s evidence consists of an affidavit by admitted crack-addict Robert Alexander, who states that detectives promised to help Alexander with pending drug charges in exchange for testimony against individuals *other than Williams*. (Aff. in Support of Pet.’s Mot. to Reopen Case, Aug. 25, 2005 (emphasis added).) It is self-apparent that this affidavit is insufficient to warrant the overturning of any judgment under the *Hazel-Atlas* doctrine.

For these reasons, petitioner’s motion to reopen his case, and his motion for discovery in

support of his motion to reopen, will be denied. An appropriate order follows.

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Order

And now, this _____ day of December 2005, upon consideration of petitioner Arthur R. Williams, Jr.'s Motion to Re-Open Case Under Rule 60 (Doc. # 26), it is hereby ORDERED that petitioner's motion is DENIED. Petitioner's Motion for Discovery (Doc. #28) is DISMISSED as moot.

William H. Yohn, Jr., Judge