

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

NAZARIO BURGOS,	:	CIVIL ACTION
	:	
Petitioner,	:	
	:	NO. 01-2431
v.	:	
	:	
DONALD T. VAUGHN, et al.,	:	
	:	
Respondents.	:	

MEMORANDUM AND ORDER

BUCKWALTER, S.J.

January 12, 2006

On October 19, 2005, Petitioner filed a Motion for Relief pursuant to Fed.R.Civ.P. 60(b)(2)&(6). Relief under 60(b)(2) is clearly untimely being filed more than one year after the Third Circuit denied his appeal on January 9, 2003 from this court's order of June 25, 2002 denying his Petition for Writ of Habeas Corpus.

It is also untimely under 60(b)(6) since Petitioner waited well over 2 ½ years to file this Petition. This exceeds the "reasonable time" given under 60(b)(6) in which to file.

In Moolenarr v. Government of Virgin Islands, 822 F.2d 1342 (3d Cir. 1987), about 2 ½ months after the district court's decision on remand but almost two years after that court's original judgment, the plaintiff sought to reopen judgment and the district court did so under Rule 60(b)(6). In vacating that judgment, the court of appeals in addition to finding no extraordinary circumstances found also that the Rule 60(b)(6) motion was not made in a reasonable time. The basis for the attack on the original judgment was available at the time that judgment was entered.

In the present case, what appears to be the only basis for this 60(b)(6) motion being considered at all is his contention that the district court ruled incorrectly that some of his claims

were procedurally barred. Gonzalez v. Crosby, 125 S.Ct. 2641 (2005). As previously stated, however, Petitioner has waited for over 2 ½ years. The record reveals no specific reason for this delay although by implication suggests that two recent cases may have been the impetus for the present filing.

Petitioner cites Gonzalez v. Carter, *supra*, and Slutzer v. Johnson, 393 F.3d 373 (2005) on the first page of his Petition. These recent cases do not excuse the unreasonable length of time in filing this Petition.

Moreover, in Pridgen v. Shannon, 380 F.3d 721 (3d Cir. 2004), *citing* Page v. Schweiker, 786 F.2d 150, 158 (3d Cir. 1986), the court held that only “extraordinary circumstances” justify relief under Rule 60(b)(6). The court also quoted Martinez-McBean v. Government of Virgin Islands, 562 F.2d 908, 912 (3d Cir. 1977) for the proposition that “legal error does not by itself warrant the application of Rule 60(b) . . . since legal error can usually be corrected on appeal, that factor without more does not justify the granting of relief under Rule 60(b)(6).”

Based upon the foregoing, the following ORDER is entered:

AND NOW, this 12th day of January, 2006, it is hereby **ORDERED** that Petitioner’s Motion for Relief (Docket No. 31) is **DENIED**.

BY THE COURT:

RONALD L. BUCKWALTER, S.J.