

## APPENDIX

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ALD-143

March 9, 2018

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

C.A. No. 17-3710

UNITED STATES OF AMERICA

VS.

BERNARD J. BAGDIS, Appellant

(E.D. Pa. Crim. No. 2-07-cr-00730-001)

Present: MCKEE, VANASKIE and SCIRICA, Circuit Judges

Submitted is Appellant's application for a certificate of appealability under  
28 U.S.C. § 2253(c)(1)

in the above-captioned case.

Respectfully,

Clerk

ORDER

The foregoing request for a certificate of appealability is denied. Appellant's "Timely Resubmittal of Motion under 28 U.S.C. § 2255(f)(4)," which we understand as a motion brought pursuant to Fed. R. Civ. P. 60(b), *see Ahmed v. Dragovich*, 297 F.3d 201, 208-09 (3d Cir. 2002), contains both an attack on the manner in which the earlier habeas judgment was procured as well as an attack on his original conviction. *See Gonzalez v. Crosby*, 545 U.S. 524, 530-32 (2005); *Pridgen v. Shannon*, 380 F.3d 721, 727 (3d Cir. 2004). To the extent that Appellant alleged that the District Court improperly concluded that his § 2255 motion was untimely filed, a certificate of appealability is not warranted because he failed to make a substantial showing, see 28 U.S.C. § 2253(c), that the limitations period should have been extended under § 2255(f)(4). To the extent that Appellant seeks to attack his underlying conviction, his Rule 60(b) motion is properly viewed as an unauthorized second or successive 28 U.S.C. § 2255 motion. *See Pridgen*,

380 F.3d at 727. The District Court did not err in rejecting such an attack. *Robinson v. Johnson*, 313 F.3d 128, 139-40 (3d Cir. 2002).

By the Court,

s/ Thomas I. Vanaskie  
Circuit Judge

Dated: May 4, 2018  
ARR/cc: BJB; DJI



A True Copy:

*Patricia A. Dodszeweit*

Patricia S. Dodszeweit, Clerk  
Certified Order Issued in Lieu of Mandate

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 17-3710

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UNITED STATES OF AMERICA

v.

BERNARD J. BAGDIS,  
a/k/a Pat Davis  
a/k/a Frank Benjamin  
a/k/a Adam Samuels  
a/k/a Chris White  
a/k/a Jay

BERNARD J. BAGDIS,  
Appellant

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(D.C. Civil No. 2-07-cr-00730-001)

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SUR PETITION FOR REHEARING

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Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,  
HARDIMAN, GREENAWAY, JR., VANASKIE, SHWARTZ, KRAUSE, RESTREPO,  
BIBAS, and SCIRICA\*, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having  
been submitted to the judges who participated in the decision of this Court and to all the  
other available circuit judges of the circuit in regular active service, and no judge who

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\* Judge Scirica's vote is limited to panel rehearing.

concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Thomas I. Vanaskie  
Circuit Judge

Dated: July 3, 2018

NMR/cc: Mr. Bernard J. Bagdis  
David J. Ignall, Esq.

BLD-268

June 1, 2017

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

C.A. No. 17-1711

UNITED STATES OF AMERICA

VS.

BERNARD J. BAGDIS,  
a/k/a Pat Davis, a/k/a Frank Benjamin,  
a/k/a Adam Samuels, a/k/a Chris White, a/k/a Jay

Bernard J. Bagdis, Appellant

(E.D. Pa. Crim. No. 2-07-cr-00730-001)

Present: AMBRO, GREENAWAY, JR. and SCIRICA, Circuit Judges

Submitted is Appellant's notice of appeal, as amended, which may be construed as a request for a certificate of appealability under 28 U.S.C. § 2253(c)(1), in the above-captioned case.

Respectfully,

Clerk

MMW/BNB/sfh/tmm

ORDER

The foregoing request for a certificate of appealability is denied, as jurists of reason could not debate that the District Court properly dismissed Appellant's motion under 28 U.S.C. § 2255 as untimely filed. See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rosa v. United States, 785 F.3d 856, 857 (2d Cir. 2015). Appellant has failed to establish "extraordinary circumstances" warranting equitable tolling of the limitations period. See Holland v. Florida, 560 U.S. 631, 652 (2010).

By the Court,

s/ Anthony J. Scirica  
Circuit Judge

Dated: July 12, 2017  
tmm/cc: David J. Ignall Esq.  
Sean O. O'Connell, Esq.  
Bernard J. Bagdis



A True Copy

*Marcia M. Waldron*

Marcia M. Waldron, Clerk  
Certified order issued in lieu of mandate.

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 17-1711

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UNITED STATES OF AMERICA

v.

BERNARD J. BAGDIS,  
a/k/a Pat Davis  
a/k/a Frank Benjamin  
a/k/a Adam Samuels  
a/k/a Chris White  
a/k/a Jay

Bernard J. Bagdis,  
Appellant

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(D.C. Crim. No. 2-07-cr-00730-001)

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SUR PETITION FOR REHEARING

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Present: SMITH, Chief Judge, MCKEE, AMBRO, CHAGARES, JORDAN,  
HARDIMAN, GREENAWAY, JR., VANASKIE, SHWARTZ, KRAUSE, RESTREPO,  
and SCIRICA\*, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who

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\*As to panel rehearing only.



concurrent in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Anthony J. Scirica  
Circuit Judge

Dated: September 20, 2017  
tnm/cc: Bernard J. Bagdis  
David J. Ignall, Esq.

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

UNITED STATES OF AMERICA

v.

BERNARD J. BAGDIS

CRIMINAL ACTION NO. 07-CR-730-1  
CIVIL ACTION NO. 17-CV-4286

ORDER

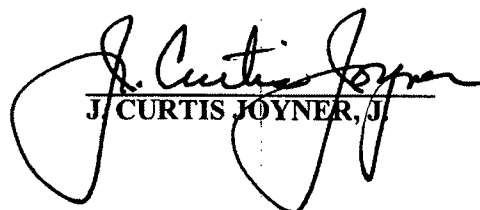
On September 26, 2017, Defendant filed a "Timely Resubmittal of Motion Under 28 U.S.C. § 2255(f)(4) to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody." In the motion Defendant seeks to have his June 2010 conviction vacated. However, Defendant filed his first motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 on November 29, 2016. That motion was dismissed on February 20, 2017 because it was time barred. Defendant subsequently filed a Notice of Appeal in the United States Court of Appeals for the Third Circuit. The Court of Appeals denied his request for a certificate of appealability on July 12, 2017.

The instant motion to vacate must be dismissed as an unauthorized second or successive motion. Petitioner may not file a second or successive motion for relief pursuant to 28 U.S.C. § 2255 without first obtaining authorization from a Court of Appeals. Therefore, this court lacks jurisdiction to consider the claims raised in the instant motion and it must be dismissed for lack of jurisdiction.

*See United States v. Baptiste*, 223 F.3d 188, 190 (3d Cir. 2000).

AND NOW, this 17<sup>th</sup> day of October 2017 IT IS HEREBY ORDERED that

1. Defendant's motion to vacate is **DISMISSED**;
2. Defendant's remaining pending motions are **DENIED**; and,
3. A certificate of appealability will not issue because reasonable jurists would not debate the correctness of this Court's procedural ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

  
J. CURTIS JOYNER, J.

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

UNITED STATES OF AMERICA : CRIMINAL ACTION  
VS. :  
BERNARD J. BAGDIS : NO. 07-CR-730-1

ORDER

AND NOW, this 1st day of May, 2017, upon consideration of the Defendant's Motion for Reconsideration of this Court's February 8, 2017 Order dismissing the Defendant's Motion to Vacate, Set Aside or Correct His Sentence filed under 28 U.S.C. Section 2255 as being untimely filed, it is hereby ORDERED that said Motion is DENIED<sup>1</sup>. This Court declines to issue a Certificate of Appealability.

BY THE COURT:

s/J. Curtis Joyner  
J. CURTIS JOYNER, J.

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1. This Court finds that the Defendant's motion lacks any merit and must be denied.

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

UNITED STATES OF AMERICA : CRIMINAL NO. 07-730  
v. : CIVIL ACTION NO. 16-6232  
BERNARD J. BAGDIS :

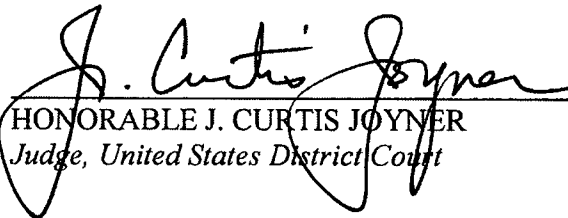
ORDER

AND NOW, this 8<sup>th</sup> day of February, 2017, it is hereby

ORDERED

that the government's Motion to Dismiss the defendant's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct his Sentence is hereby GRANTED, as the defendant's petition was filed outside the limitations period within which he was required to seek collateral relief from his conviction and sentence, and the defendant's Motion under 28 U.S.C. § 2255 is DISMISSED as untimely filed. As the motion was untimely filed, the Court declines to issue a certificate of appealability.

BY THE COURT:

  
HONORABLE J. CURTIS JOYNER  
Judge, United States District Court