

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 31, 2018
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,)
)
 v.) O R D E R
)
 WILLIAM ANTHONY JOHNSON,)
)
 Defendant-Appellant.)

Defendant William Johnson seeks reconsideration of the August 8, 2018 order denying his motion to recall the mandate in *United States v. Johnson*, 440 F.3d 832 (6th Cir.), *cert. denied*, 549 U.S. 829 (2006).

Despite Johnson's argument to the contrary, the lengthy passage of time between the entry of the final judgment and the filing of the motion to recall the mandate is a relevant factor in evaluating the motion to recall the mandate. *See Patterson v. Haskins*, 470 F.3d 645, 663–64 (6th Cir. 2006). Johnson asserts that the passage of sixteen years did not prevent the Ninth Circuit from recalling the mandate in *Carrington v. United States*, 470 F.3d 920 (9th Cir. 2006). That decision, however, was withdrawn and superseded by *Carrington v. United States*, 503 F.3d 888 (9th Cir. 2007), *dissent amended on denial of reh'g and reh'g en banc*, 530 F.3d 1183 (9th Cir. 2008). The Ninth Circuit concluded that the defendant's claim that he was entitled to a new sentence under *United States v. Booker*, 543 U.S. 220 (2005), did not present grave, unforeseen circumstances that would support the recall of the mandate. *Carrington*, 503 F.3d at 891–93.

Johnson also argues that his appellate counsel was ineffective. He further raises unsubstantiated claims that his counsel had a conflict of interest and committed fraud on the court. But the power to recall a mandate "is one of last resort, to be held in reserve against grave, unforeseen contingencies." *Calderon v. Thompson*, 523 U.S. 538, 550 (1998). Johnson has not demonstrated exceptional circumstances that override the strong public policy in favor of the finality of judgments. *See United States v. Saikaly*, 424 F.3d 514, 517 (6th Cir. 2005) (order); *BellSouth Corp. v. FCC*, 96 F.3d 849, 851 (6th Cir. 1996).

Johnson's petition for rehearing, seeking reconsideration of the denial of his motion to recall the mandate, is therefore **DENIED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk