

"appendix A"

United States Court of Appeals For the First Circuit

No. 17-1102

UNITED STATES,

Appellee,

v.

JOSE J. GALIANY-CRUZ, a/k/a Catano, a/k/a Jose J. Galiani,

Defendant, Appellant.

Before

Lynch, Kayatta and Barron,
Circuit Judges.

JUDGMENT

Entered: April 23, 2018

Jose J. Galiany-Cruz appeals from the district court's denial of his motions pursuant to Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944), *overruled on other grounds*, Standard Oil Co. of Cal. v. United States, 429 U.S. 17 (1976) (per curiam) and Fed.R.Civ.P. 60(d)(3), seeking relief from his conviction of conspiracy to possess with intent to distribute controlled substances and possession of firearms, and from his 660-month sentence. He also appeals from the denial of his Motions for Reconsideration, pursuant to Fed.R.Civ.P. 59(e).

In denying Galiany's Rule 60(d)(3) motions, the district court stated that "[t]he only way Defendant may attack his conviction is by filing a Petition under 28 U.S.C. 2255," and noted that such motion would be second/successive. District Court Electronic Order, Dkt # 918. Galiany does not claim that he could satisfy the gatekeeping provisions under 28 U.S.C. § 2255(h). Instead, he maintains that he is bringing an independent challenge to his conviction and sentence on the ground of "fraud upon the court," under Rule 60(d)(3), as to which AEDPA's gatekeeping provisions do not apply.

We need not decide whether the inherent power to vacate a judgment, as recognized in Fed.R.Civ.P. 60(d)(3) and Hazel-Atlas, extends to collateral motions to vacate criminal judgments. Even if the district court possessed such inherent power, Galiany's claims "d[o] not fall within the

narrow definition of 'fraud upon the court' which is required to vacate a judgment." United States v. Smiley, 553 F.3d 1137, 1146 (8th Cir. 2009).

Neither the probation officer's recommendation in the presentence report to apply the murder cross-reference under U.S.S.G. §2D1.1(d)(1), nor the alleged perjury by government witnesses before the grand jury and at trial, even if proved, would satisfy "Rule 60(d)(3)'s requirement of 'an unconscionable scheme or the most egregious conduct designed to corrupt the judicial process.'" Fontanillas-Lopez v. Morell Bauza Cartagena & Dapena, LLC, 832 F.3d 50, 63 n.11 (1st Cir. 2016). See Roger Edwards, LLC v. Fiddes & Son Ltd., 427 F.3d 129, 133 (1st Cir. 2005).¹ Galiany's assertions that officers of the court perpetrated the fraud are conclusory and insufficiently supported. There was no abuse of discretion in denying relief under Havel-Atlas and Rule 60(d)(3).

Nor did the district court abuse its discretion in denying Galiany's motions pursuant to Fed.R.Civ.P. 59(e), which failed to "either establish a clear error of law or point to newly discovered evidence of sufficient consequence to make a difference." Franchina v. City of Providence, 881 F.3d 32, 56 (1st Cir. 2018)(citations omitted). Puerto Rico v. Sanchez Valle, 136 S.Ct. 1863 (2016) did not qualify as an intervening change in controlling law entitling Galiany to Rule 59(e) relief.

Affirmed. See 1st Cir. R. 27.0(c).

By the Court:

/s/ Margaret Carter, Clerk

s F. Klumper
apo-Iriarte
na E. Bauza Almonte
J. Galiany-Cruz

¹ Because Galiany's claims fail on the merits, it is unnecessary for us to decide whether they ought to be construed as § 2255 motions or to consider this appeal as a request to file a second/successive § 2255 motion. See United States v. Williams, 790 F.3d 1059, 1073 (10th Cir. 2015).

(Attachment C)

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United States District Court

District of Puerto Rico

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The following transaction was entered on 12/5/2016 at 5:21 PM AST and filed on 12/5/2016

Case Name: USA v. Galiany-Cruz et al

Case Number: 3:03-cr-00083-JAG

Filer:

Document Number: 932(No document attached)

Docket Text:

ORDER as to Jose J. Galiany-Cruz denying [924] Motion for Reconsideration; denying [925] Motion for Reconsideration. Signed by Judge Jay A. Garcia-Gregory on 12/5/2016. (AP)

(Attachment B)

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United States District Court

District of Puerto Rico

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The following transaction was entered on 8/6/2016 at 4:43 PM AST and filed on 8/6/2016

Case Name: USA v. Galiany-Cruz et al

Case Number: 3:03-cr-00083-JAG

Filer:

Document Number: 918(No document attached)

Docket Text:

ORDER as to Jose J. Galiany-Cruz (1)denying [894] Motion to Dismiss; denying [897] Motion for Leave to File; denying [898] Motion for Release from Custody; denying [907] Motion to Appoint Counsel; denying [908] Motion to Dismiss; denying [909] Motion Requesting Order. [The only way Defendant may attack his conviction is by filing a Petition under 28 U.S.C. 2255. However, since Defendant already filed a prior 2255 petition which was denied, Defendant is advised that second or successive 2255 petitions are rarely allowed. Signed by Judge Jay A. Garcia-Gregory on 8/5/2016. (AP)]