

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

OCT 9 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ROBERT TRINGHAM,

Defendant-Appellant,

v.

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

No. 18-55614

D.C. Nos. 2:14-cv-02297-SJO  
2:09-cr-00490-SJO-1  
Central District of California,  
Los Angeles

ORDER

Before: BERZON and IKUTA, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown that “jurists of reason would find it debatable whether the [motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Gonzalez v. Crosby*, 545 U.S. 524, 530-31 (2005); *Ortiz v. Stewart*, 195 F.3d 520, 520-21 (9th Cir. 1999); *United States v. Winkles*, 795 F.3d 1134, 1143 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 2462 (2016).

Any pending motions are denied as moot.

**DENIED.**

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Central District of California,  
Los Angeles

ORDER

Before: SCHROEDER and CHRISTEN, Circuit Judges.

The motion for clarification and reconsideration (Docket Entry No. 7) is  
denied. *See* 9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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CASE NO.: CV 14-02297 SJO  
CR 09-00490 SJO

DATE: April 16, 2018

TITLE: Robert Tringham v. United States of America

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PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

Victor Paul Cruz  
Courtroom Clerk

Not Present  
Court Reporter

COUNSEL PRESENT FOR PLAINTIFF(S):

COUNSEL PRESENT FOR DEFENDANT(S):

Not Present

Not Present

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PROCEEDINGS (in chambers): ORDER DENYING PETITIONER'S MOTION TO VACATE JUDGEMENT OF DISTRICT COURT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60(b)(6) [Docket No. 34]

This matter is before the Court on Petitioner Robert Tringham's ("Petitioner") Motion to Vacate Judgement of District Court pursuant to Federal Rule of Civil Procedure 60(b)(6) ("Motion"), filed on or about October 17, 2016. Respondent United States of America ("Respondent") opposed the Motion ("Opposition") on January 31, 2018. Petitioner replied ("Reply") on March 15, 2018. For the following reasons, the court **DENIES** Petitioner's Motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

On March 25, 2014, Petitioner filed a habeas petition pursuant to 28 U.S.C. § 2255.<sup>1</sup> (Motion to Vacate ("§ 2255 Motion"), ECF No. 1.) The Court denied the petition on April 21, 2015. (See *generally* Order Denying § 2255). On May 22, 2015, Petitioner responded with a Motion for reconsideration pursuant to Federal Rule of Civil Procedure 59(e). (Motion to Correct and/or Amend ("59(e) Motion"), ECF No. 27.) On June 15, 2015, the Court limited its review to the first twenty five pages of the reconsideration motion and ultimately denied the relief sought. (See *generally* Order Denying Motion to Correct and/or Amend ("Order Denying 59(e)"), ECF No. 28.) Next, Petitioner asked the Court to reconsider its 'limited' review of Petitioner's 59(e) Motion. (Motion for Reconsideration of June 15 Order ("Motion for Reconsideration"), ECF No. 29.) On August 13, 2015, the Court denied Petitioner's Motion for Reconsideration. (Order Denying Motion for Reconsideration of June 15 Order, ECF No. 30.)

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<sup>1</sup> A full recitation of the factual and procedural background leading up to this filing can be found in the Court's previous orders. (See, e.g., Order Denying Motion Under U.S.C § 2255 ("Order Denying § 2255"), 1-3, ECF No. 26.)

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CIVIL MINUTES - GENERAL

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CASE NO.: CV 14-02297 SJO  
CR 09-00490 SJODATE: April 16, 2018

On August 25, 2015, the Court denied a certificate of appealability. (Order Denying Certificate of Appealability, ECF No. 31.)<sup>2</sup> On or about October 17, 2016, Petitioner filed the immediate Motion hoping to vacate the Court's denial of Petitioner's § 2255 Motion. (Mot., ECF No. 34.) Initially, the Court rejected Petitioner's Motion because the case had been closed. (Mot., ECF No. 34.) However, on November 4, 2016, Petitioner appealed the Court's ruling to the Ninth Circuit. (Notice of Appeal, ECF No. 35.) The Ninth Circuit granted Petitioner's appeal and summarily remanded the matter on October 11, 2017, (Order from Ninth Circuit, ECF No. 38.) On November 16, 2017, the Court reopened the case. (Minute Order in Chambers, ECF No. 39.) On January 31, 2018, Respondent filed its Opposition. (Opp'n, ECF No. 46). Respondent filed his Reply on March 15, 2018. (Reply, ECF No. 51.)

II. DISCUSSIONA. Legal Standard

Rule 60(b) of the Federal Rules of Civil Procedure provides that "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding" for six enumerated reasons. Fed. R. Civ. P. 60(b). At issue in this case is whether the Court can properly grant relief under Rule 60(b)(6), which applies when "any other reason . . . justifies relief." Fed. R. Civ. P. 60(b)(6).

Despite its broad language, "Rule 60(b)(6) has been used sparingly as an equitable remedy to prevent manifest injustice." *U.S. v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993). The Court of Appeals for the Ninth Circuit has instructed that "[t]he rule is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." *Alpine Land*, 984 F.2d at 1049. Indeed, the Ninth Circuit, after "review[ing] . . . cases in this and other circuits," held that relief under Rule 60(b)(6) "is available only where extraordinary circumstances prevented a litigant from seeking earlier, more timely relief." *Id.* "Although the timeliness of a Rule 60(b)(6) motion 'depends on the facts of each case,' relief may not be had where 'the party seeking reconsideration has ignored normal legal recourses.'" *Id.* (quoting *In re Pac. Far East Lines, Inc.*, 889 F.2d 242, 249, 250 (9th Cir. 1989).) Thus, "Rule 60(b)(6) relief normally will not be granted unless the moving party is able to show both injury and that circumstances beyond its control prevented timely action to protect its interests." *Id.*

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<sup>2</sup> Later, the Ninth Circuit denied a certificate of appealability precluding Petitioner from appealing both the denial of his § 2255 Motion and the denial of his 59(e) Motion. (See CCA 15-56334, ECF No. 15.)

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

## CIVIL MINUTES - GENERAL

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CR 09-00490 SJODATE: April 16, 2018

Moreover, "[a] party may not seek relief from judgment under Rule 60(b)(6), however, on any ground that is already specifically enumerated in 60(b) subsections (1) through (5)." *Inland Concrete Enters., Inc. v. Kraft*, 318 F.R.D. 383, 412 (citing *Mackey v. Hoffman*, 682 F.3d 1247, 1251 (9th Cir. 2012)); see also *Clapprott v. United States*, 335 U.S. 601, 614-15 (1949) (holding that Rule 60(b)(6) applies "for all reasons except the five particularly specified" in clauses (1) through (5)).

B. Analysis

Petitioner contends the Court has failed to resolve the following claims: (1) freestanding legal innocence (as it relates to allegations regarding Inspector Basak); (2) failure to timely deliver exhibits and jury instructions; (3) failure to address Petitioner's request to amend pleading before adjudication; (4) failure to address juror bias; (5) Brady violation; (6) denial of Fifth Amendment right to effective assistance of advisory counsel; (7) admission of prejudicial exhibits ("1-3, and 5") that violated USA/UK Mutual Legal Assistance Treaty ("MLAT"); (8) failure of defense counsel to hire tax expert; (9) failure of defense counsel to hire securities expert; (10) failure of defense counsel to investigate treaty law; (11) failure of defense counsel to investigate status of Government exhibits ("1-3, and 5"); (12) failure of defense counsel to interview Inspector Basak or hire a forensic computer science expert. (Mot. iii.)

Yet, in his 59(e) Motion, Petitioner made the same claims. For example, Petitioner argued the Court erred when it denied Petitioner an evidentiary hearing to develop the following issues: (1) a claim of "actual innocence to Count 9 of the Indictment" (as it relates to allegations regarding Inspector Basak); (2) a "Brady claim"; (3) a claim that "'MLAT' exhibits 1-5 were wrongly ... admitted"; (4) a claim regarding juror bias; (5) a claim that jury instructions were "delivered too late to the jury room"; (6) a claim of ineffective assistance of counsel based on counsel's (7) "failure to investigate the MLAT" (i.e., treaty law), (8) failure to interview "a single potential defense witness" (e.g., Inspector Basak), (9) failure to hire a "taxation" expert, (10) failure to hire a "computer operation and practices" expert, (11) failure to investigate Government exhibits; and, (12) a claim that Petitioner was denied his "Sixth Amendment Right to ... effective assistance of [advisory] counsel." (59(e) Motion, 1-4.)

After reviewing Petitioner's 59(e) Motion, the Court noted, "Petitioner raises numerous arguments, most of which have already been raised and considered in Petitioner's § 2255 Motion." (Order Denying 59(e), 1.) Accordingly, Petitioner's immediate claims that parallel his previously adjudicated ones will only be considered if they meet the criteria set forth in 28 U.S.C § 2255(h). *United States v. Washington*, 653 F.3d 1057, 1059 (9th Cir. 2011) ("[w]hen a Rule 60(b) motion is actually a disguised second or successive § 2255 motion, it must meet the criteria set forth in § 2255(h)"). Thus, because Petitioner is unable to show either "newly discovered evidence ... that would be sufficient to establish by clear and convincing evidence" a not guilty verdict by a

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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CASE NO.: CV 14-02297 SJO  
CR 09-00490 SJO

DATE: April 16, 2018

"reasonable factfinder," nor, "a new rule of constitutional law ...previously unavailable," Petitioner's subject Motion must be denied. 28 U.S.C. § 2255(h)(1-2). In other words, here, the Court finds no evidence of "manifest injustice." *Alpine Land*, 984 F.2d at 1049.

III. RULING

For the forgoing reasons, the Court **DENIES** Petitioner's Motion to Vacate Judgment of District Court pursuant to Federal Rule of Civil Procedure 60(b)(6).

IT IS SO ORDERED.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**CIVIL MINUTES - GENERAL**

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**CASE NO.:** CV 17-08145 SJO  
CR 09-00490 SJO

**DATE:** April 23, 2018

**TITLE:** Robert Tringham v. Felicia Ponce

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**PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE**

Victor Paul Cruz  
Courtroom Clerk

Not Present  
Court Reporter

**COUNSEL PRESENT FOR PLAINTIFF:**

**COUNSEL PRESENT FOR DEFENDANT:**

Not Present

Not Present

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**PROCEEDINGS (in chambers): ORDER DENYING CERTIFICATE OF APPEALABILITY [ECF No. 26]**

This matter is before the Court on Petitioner Robert Tringham's ("Petitioner") Notice of Appeal to the Ninth Circuit ("Notice"), filed March 30, 2018. On April 16, 2018, the Ninth Circuit issued an order to the Court directing it to approve or deny a certificate of appealability on the Court's Order Denying Petitioner's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 ("Order"). (Order, ECF No. 22.) For the following reasons, the Court **DENIES** issuance of a certificate of appealability.

After filing a new trial motion, (CR, ECF No. 169), a direct appeal, (CR, ECF No. 179), a motion for coram nobis relief, (CR, ECF No. 210), a 28 U.S.C. § 2255 habeas petition, (CR, ECF No. 229), a motion for reconsideration thereof, (CR, ECF No. 234), a Rule 60 motion to vacate the Court's denial of Petitioner's § 2255 Motion (CV14, ECF No. 39), and a 28 USC § 144 motion, (CV17, ECF No. 13), none of which were successful, Petitioner, on or about November 8, 2017, filed the Petition at issue. (CV17, Mot., ECF No. 1.)

In the Order, the Court found that: (1) Petitioner's restitution obligation had already been exempted, and he was not entitled to the return of his monies, thus rendering his petition moot; and (2) the Court did not have jurisdiction under 28 U.S.C. § 2241 to hear Petitioner's challenge to the legality of his sentence, and the Petition was simply an attempt to circumvent the Court's rules and file a second petition under § 2255. (*See generally* Order.) The Court finds that neither of these issues raise a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. §§ 2253(c)(2), (c)(3), 2254; *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997).

For the foregoing reasons, the Court declines to issue a Certificate of Appealability.

IT IS SO ORDERED.

**Additional material  
from this filing is  
available in the  
Clerk's Office.**