

Appx B

BLD-007

October 10, 2019

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

No. 19-2077

UNITED STATES OF AMERICA

v.

PATRICK KOFALT, Appellant

(W.D. Pa. Crim. No. 2-11-cr-00155-001)  
(Criminal treated as civil)

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

Submitted are:

- (1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1);
- (2) Appellee's Response thereto; and
- (3) Appellant's Reply

in the above-captioned case.

Respectfully,

Clerk

**O R D E R**

The foregoing application for a certificate of appealability is denied. Reasonable jurists would not debate whether the District Court should have granted Kofalt's motion to reopen, filed pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure. See Gonzalez v. Crosby, 545 U.S. 524, 532 n.4, 533 (2005); Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). Kofalt's motion did not set forth "extraordinary circumstances" for reopening the 28 U.S.C. § 2255 proceedings. Gonzalez, 545 U.S. at 534-35.

By the Court,

s/Thomas L. Ambro, Circuit Judge

Dated: October 25, 2019

Lmr/cc: Laura S. Irwin

Patrick Joseph Kofalt

A True Copy:

*Patricia S. Dodsweat*

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



Appx A

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

UNITED STATES OF AMERICA

PATRICK JOSEPH KOFALT,

Defendant.

)  
v.  
)  
)  
Criminal No. 11-155  
)  
Judge Nora Barry Fischer  
)  
)

ORDER OF COURT

AND NOW, this 3rd day of May, 2019, upon consideration of Defendant Patrick Joseph Kofalt's Motion for Relief from Judgment Under Federal Rule of Civil Procedure 60(b), (Docket No. [152]),

IT IS HEREBY ORDERED that Defendant's Motion [152] is DISMISSED, for lack of subject matter jurisdiction. In so holding, the Court construes Defendant's Motion as a second or successive § 2255 petition because the arguments set forth therein seek to challenge "his conviction and sentence, not the integrity of his § 2255 proceeding." *United States v. Donahue*, 733 F. App'x 600, 603 (3d Cir. 2018). Indeed, Defendant's Motion merely reiterates arguments previously raised in his original § 2255 petition, which was denied by this Court, *United States v. Kofalt*, 2018 WL 2766108, (W.D. Pa. Jun. 8, 2018), with his motion for a certificate of appealability being denied by the U.S. Court of Appeals for the Third Circuit, (Docket No. 151). As Defendant has not obtained certification from the Court of Appeals to pursue a second or successive § 2255 petition in this Court, *see* 28 U.S.C. § 2255(h), his motion must be dismissed.

*/s Nora Barry Fischer*  
Nora Barry Fischer  
U.S. District Judge

cc/ecf: All counsel of record