

BLD-037

November 24, 2020

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 20-2995

UNITED STATES OF AMERICA

v.

AMIN A. RASHID, Appellant

(E.D. Pa. Crim. No. 2-08-cr-00493-001)
(Criminal treated as civil)

Present: AMBRO, SHWARTZ, and PORTER, Circuit Judges

Submitted:

- (1) By the Clerk for a decision on the issuance of a certificate of appealability; and
- (2) Appellant's "Motion for Summary Reversal or, in the Alternative, Issuance of a Certificate of Appealability"

in the above-captioned case.

Respectfully,

Clerk

ORDER

Appellant appeals from (1) the District Court's August 3, 2020 order denying his motion filed pursuant to Federal Rule of Civil Procedure 60(b)(4), and (2) the District Court's August 28, 2020 order denying his related motion for reconsideration. Appellant must obtain a certificate of appealability ("COA") to proceed with this appeal. See 28 U.S.C. § 2253(c)(1)(B); United States v. Folk, 954 F.3d 597, 600-01 (3d Cir. 2020); United States v. Edwards, 309 F.3d 110, 113 (3d Cir. 2002) (per curiam); see also Buck v. Davis, 137 S. Ct. 759, 772 n.* (2017). But Appellant has not demonstrated that he is entitled to a COA, for reasonable jurists would debate neither the District Court's denial

APPENDIX "A"

of his Rule 60(b)(4) motion, see United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 270 (2010), nor its denial of his motion for reconsideration, see Lazaridis v. Wehmer, 591 F.3d 666, 669 (3d Cir. 2010) (per curiam). Accordingly, we hereby deny Appellant a COA. See Slack v. McDaniel, 529 U.S. 473, 484 (2000). To the extent that Appellant asks us to summarily reverse the District Court's rulings at issue here, that request is denied.

By the Court,

s/ Thomas L. Ambro
Circuit Judge

Dated: December 8, 2020

Sb/cc: Amin A. Rashid
Vineet Gauri, Esq.



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

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

UNITED STATES OF AMERICA :
:
v. : CRIMINAL ACTION NO. 08-493
:
AMIN RASHID :
:

ORDER

In May 2009, a Superseding Indictment “charged Rashid with ten counts of mail fraud, eight counts of aggravated identity theft, and one count of passing an altered postal money order.”¹ As the Third Circuit explained:

The Superseding Indictment specifically alleged that Rashid defrauded clients of his company, the Center for Constitutional and Criminal Justice, by accepting fees to stop or reverse Sheriff’s sales, or to recover proceeds from Sheriff’s sales, while in fact performing none of these services. Rashid also stole his clients’ identities. City Line Abstract Company, a title insurance company used in connection with the various Sheriff’s sales, issued distribution policies that ultimately paid Rashid over \$600,000.²

“Following a jury trial, Rashid was convicted of nine counts of mail fraud and eight counts of aggravated identity theft” and this Court “sentenced Rashid in July, 2013 to a total term of imprisonment of 240 months, to be followed by 5 years of supervised release.”³

On June 20, 2016, the Court granted in part the government’s motion requiring Rashid to seek leave of Court before filing motions in this case.⁴ The Court explained that:

Defendant has filed numerous motions seeking to re-litigate issues that have repeatedly been decided by this Court and by the Third Circuit. In addition to the multiple non-meritorious motions to recuse and the thirty post-trial motions filed by Defendant, he has also filed fourteen non-meritorious motions to dismiss the

¹ *United States v. Rashid*, 607 F. App’x 226, 227 (3d Cir. 2015).

² *Id.*

³ *Id.*

⁴ Doc. No. 500.

Appendix “B”

indictment against him as duplicitous, jurisdictionally defective, vindictive, fraudulent, or in violation of the speedy trial act; eighteen motions for reconsideration of various Court rulings; and fourteen non-meritorious appeals, as well as a number of requests for rehearing and requests to recall the mandate. In fact, with respect to a 1993 conviction, the Third Circuit found it “undeniable” that Defendant’s “history of pro se challenges to his 1993 conviction is vexatious.”⁵ Defendant has thus exhibited a “pattern of conduct from which [the Court] can only conclude that a litigant is intentionally abusing the judicial process and will continue to do so unless restrained.”⁶

Therefore, because Defendant had responded to the government’s motions and had “exhausted all apparent avenues for relief in his criminal case except for his [then-] pending § 2255 Motion,” the Court held that “Defendant should not be permitted to file any motions that attempt to relitigate issues that have been decided” except “as to Defendant’s pending § 2255 Motion and as to [his] § 2241 action, which [was] . . . pending on appeal.”⁷

Two of Rashid’s arguments in his then-pending § 2255 motion were arguments which he has raised in various forms time and time again and which have been rejected repeatedly by this Court and the Third Circuit:⁸ 1) that the affidavit submitted by Postal Inspector Mary Fitzpatrick in support of a search warrant contained false statements; and 2) that the government withheld evidence that a subpoena was served on Maurice Mander’s attorney rather than on Mander personally.⁹ In 2017, the Court denied Rashid’s § 2255 motion without a hearing.¹⁰

On July 18, 2017, Rashid filed a Motion for Reconsideration challenging the Court’s decision not to hold an evidentiary hearing and repeating the arguments that the Court rejected

⁵ *Id.* at 6–7 (quoting *United States v. Rashid*, 375 F. App’x 199, 201 (3d Cir. 2010)).

⁶ *Id.* (quoting *Abdul-Akbar v. Watson*, 901 F.2d 329, 333 (3d Cir. 1990)).

⁷ *Id.* at 7.

⁸ See, e.g., Doc. Nos. 393, 533, 544; *United States v. Rashid*, 593 F. App’x 132, 133 (3d Cir. 2014).

⁹ Doc. No. 497.

¹⁰ Doc. No. 533.

when denying his § 2255 motion.¹¹ The Court denied the motion.¹² Rashid then filed a “Motion for Relief from Void Judgment Pursuant to Rule 60(b)(4), F.R. Civ. Proc. and Request for an Evidentiary Hearing” that again raised the two issues related to the subpoena.¹³ On March 13, 2018, the Court denied the motion explaining that “the arguments raised in his current motion have plainly been rejected by this Court and the Court of Appeals” and that “[e]ven if the Court were to reach the merits of Defendant’s Motion, Defendant has plainly failed to state any grounds for relief cognizable under Rule 60(b)(4).”¹⁴ On June 19, 2018, the Court of Appeals denied Rashid’s request for a certificate of appealability.¹⁵

On March 11, 2020, Rashid filed a Motion for Permission to File a Motion for Relief from Judgment Pursuant to Rule 60(b)(4).¹⁶ On June 19, 2020, Rashid filed an Emergency Motion for Bail Pending Final Disposition of Habeas Proceedings, Or, In The Alternative, A Grant of Compassionate Release Pursuant to The First Step Act of 2018.¹⁷ The government has filed responses opposing both motions and has also requested that “the Court’s June 20, 2016 Order should be extended to also bar any further litigation of Rashid’s Section 2255 and 2241 claims, both of which have been finally decided.”¹⁸

¹¹ Doc. No. 535.

¹² Doc. No. 536.

¹³ Doc. No. 537.

¹⁴ Doc. No. 544.

¹⁵ Doc. No. 545.

¹⁶ Doc. No. 547.

¹⁷ Doc. No. 550

¹⁸ Doc. No. 552.

because it is or may have been erroneous" and "a motion under Rule 60(b)(4) is not a substitute for a timely appeal."²⁴

Once again, Rashid has not stated grounds for relief cognizable under Rule 60(b)(4). A "district court is required to hold an evidentiary hearing 'unless the motion and files and records of the case show conclusively that the movant is not entitled to relief.'"²⁵ However, even if a district court erroneously fails to hold an evidentiary hearing, that does not render a judgment void; rather, the proper course is for the defendant to seek to appeal the decision. Here, the Third Circuit denied Rashid's request for a certificate of appealability and explained that "jurists of reason could not debate that the District Court properly denied [Rashid's] . . . motion for an evidentiary hearing."²⁶ Rule 60(b)(4) does not provide a vehicle for Rashid to relitigate his arguments.

Moreover, even assuming that a district court's failure to hold an evidentiary hearing could provide grounds for relief under Rule 60(b)(4), Rashid's motion would still be denied. As the Court has repeatedly explained, because Rashid's § 2255 motion failed to state a viable claim, the Court was not obligated to provide Rashid with an evidentiary hearing.²⁷

II. Emergency Motion for Bail Pending Final Disposition of Habeas Proceedings, Or, In The Alternative, A Grant of Compassionate Release Pursuant to The First Step Act of 2018.

Rashid's motion seeks "release on bail because of the uncertainty as to when this Court will act on his pending post-conviction motion and the certainty that the facts in this case justifies Grant of a new trial," combined with the risk that he faces from the COVID-19

²⁴ *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010) (cleaned up).

²⁵ *United States v. Booth*, 432 F.3d 542, 545–46 (3d Cir. 2005) (quoting *United States v. McCoy*, 410 F.3d 124, 131 (3d Cir. 2005)).

²⁶ Doc. No. 545.

²⁷ See *Rodriguez v. United States*, 164 F. Supp. 3d 561, 566 (S.D.N.Y. 2016).

I. Motion for Permission to File a Motion for Relief from Judgment Pursuant to Rule 60(b)(4)

The basis for Rashid's Rule 60(b)(4) motion is again the Court's decision to deny his § 2255 motion without a hearing even though, according to Rashid, “[t]he sworn testimony adduced by the Government from Postal Inspector Mary C. Fitzpatrick on June 2, 2011, that she obtained ‘material evidence’ from Maurice Mander via the attached Grand Jury subpoena was false. Moreover, the Government Attorney . . . knew Inspector Fitzpatrick’s testimony was false because . . . he, in fact, faxed the Subpoena to Mander’s attorney.”¹⁹ The government argues that “Rashid’s motion is simply his latest attempt to re-litigate claims that have been repeatedly rejected by this Court and the Third Circuit Court of Appeals” and that “[o]nce more, Rashid’s reliance on Rule 60(b)(4) . . . is also misplaced.”²⁰

Rule 60(b)(4) provides that a court “may relieve a party or its legal representative from a final judgment, order, or proceeding” if “the judgement is void.”²¹ “A judgment may be void and subject to relief under Rule 60(b)(4) in three circumstances: (1) the Court rendering the judgment lacked subject matter jurisdiction, (2) the Court rendering the judgment lacked personal jurisdiction over the parties, or (3) it entered ‘a decree which is not within the powers granted to it by law.’”²² “The third circumstance subjecting a judgment to attack under Rule 60(b)(4) has been described as one in which the rendering court acted in a manner inconsistent with due process of law.”²³ The Supreme Court has explained that “[a] judgment is not void . . . simply

¹⁹ Doc. No. 547 at 1–2.

²⁰ Doc. No. 552.

²¹ Fed. R. Civ. P. 60(b)(4).

²² *United States v. Williams*, No. 172-27, 2015 WL 224381, at *3 (E.D. Pa. Jan. 16, 2015) (quoting *Marshall v. Board of Educ., Bergenfield, N.J.*, 575 F.2d 417, 422 (3d Cir. 1978)).

²³ *Id.* (internal quotation omitted).

pandemic.²⁸ Alternatively, based on the COVID-19 pandemic, Rashid seeks compassionate release pursuant to the First Step Act, 18 U.S.C. § 3582(c)(1)(A).

“[B]ail pending disposition of habeas corpus review is available ‘only when the petitioner has raised substantial claims upon which he has a high probability of success or exceptional circumstances exist which make a grant of bail necessary to make the habeas remedy effective.’”²⁹ Because, as explained above, Rashid’s Rule 60(b)(4) is meritless and will be denied, Rashid’s motion for bail will also be denied.

Rashid also is not entitled to compassionate release. “A court generally may not correct or modify a prison sentence once it has been imposed, unless permitted by statute or by Federal Rule of Criminal Procedure 35.”³⁰ One statute that permits such modifications is 18 U.S.C. § 3582 (c)(1)(A)(i), which, as amended by the First Step Act of 2018, allows “prisoners the right to file their own motions for a sentence reduction if they first exhaust the statute’s procedures for initially making a request to the warden to file a motion on their behalf.”³¹ The “exhaustion requirement is met if the defendant establishes either (1) that the Bureau of Prisons denied his or her request that it bring a compassionate-release motion and he or she fully exhausted all administrative appeal rights with respect to that denial, or (2) that the warden of the facility took no action on his or her request for the filing of a compassionate-release motion within 30 days of receiving it.”³² The Third Circuit has held that the failure to comply with the First Step Act’s

²⁸ Doc. No. 550 at 13.

²⁹ *Pelullo v. United States*, 487 F. App’x 1, 3 (3d Cir. 2012) (quoting *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992)).

³⁰ *United States v. Van Sickle*, No. 18-250, 2020 WL 2219496, at *3 (W.D. Wash. May 7, 2020) (citing *United States v. Penna*, 315 F.3d 509, 511 (9th Cir. 2003)).

³¹ *United States v. Hill*, 19-38, 2020 WL 2542725, at *1 (D. Conn. May 19, 2020) (citing *United States v. Almontes*, 2020 WL 1812713, at *1 (D. Conn. April 9, 2020)).

³² *United States v. Cassidy*, No. 17-116S, 2020 WL 1969303, at *2 (W.D.N.Y. Apr. 24, 2020) (citing 18 U.S.C. § 3582 (c)(1)(A)(i)).

exhaustion requirement “presents a glaring roadblock foreclosing compassionate release.”³³ “Once a defendant’s administrative remedies are exhausted, a court may grant compassionate release based upon: consideration of the factors set forth in 18 U.S.C. § 3553(a); a finding that ‘extraordinary and compelling reasons warrant such a reduction’; and a determination that the reduction is ‘consistent with applicable policy statements issued by the Sentencing Commission.’”³⁴

On October 24, 2019, Rashid requested compassionate release so that he could provide care for his sister.³⁵ On November 12, 2019, the warden denied his request.³⁶ More than seven months after his request was denied, Rashid filed his motion for compassionate release apparently based both on the need to care for his sister and the risk that he faces in prison from the COVID-19 pandemic.

To the extent his motion is based on the COVID-19 pandemic, Rashid’s failure to exhaust his administrative remedies does not allow the Court to consider his request. An inmate cannot request compassionate release from the warden for one reason and then, months after it is denied, file a motion in the district court based on a wholly different reason. Otherwise, an inmate could completely circumvent Congress’s exhaustion requirement by, for example, filing a frivolous request for release right after starting to serve their sentence; the warden’s denial of the request would then provide the inmate with a “skip-the-exhaustion-requirement card” that would allow the inmate to file a motion in the district court at any time and for any reason without requesting that the warden bring a motion on their behalf. Because Rashid only requested release

³³ *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020); *see also United States v. Alam*, 960 F.3d 831, 835–36 (6th Cir. 2020).

³⁴ *United States v. Bogdanoff*, No. 12-0190-1, 2020 WL 2307315, at *3 (E.D. Pa. May 8, 2020).

³⁵ Doc. No. 550 at 14–15.

³⁶ *See id.* at 23.

from the warden to care for his sister, the Court cannot consider his health and the COVID-19 pandemic.³⁷

To the extent that Rashid's motion is based on the need to care for his sister, the motion will be denied. Rashid argues that the First Step Act "does permit Compassionate Release to for instance 'care for siblings.'"³⁸ However, the United States Sentencing Commission, to which Congress has delegated the authority to define "extraordinary and compelling reasons,"³⁹ has not identified caring for a sibling as such a reason, and Rashid has not otherwise shown that release is warranted in this case.⁴⁰ Therefore, Rashid's motion for compassionate release will be denied.

III. Government's Request to Extend June 2016 Order

The Court finds that in light of Rashid's continued "pattern of conduct from which [the Court] can only conclude that [he] is intentionally abusing the judicial process and will continue to do so unless restrained," and as his § 2255 motion has been finally decided, the Court will grant the government's request and extend the June 20, 2016 Order to any filings related to the § 2255 motion.⁴¹ The extension does not apply to a properly-exhausted motion for compassionate release.

AND NOW, this 3rd day of August 2020, upon consideration of Defendant's Motion for Permission to File a Motion for Relief from Judgment Pursuant to Rule 60(b)(4) [Doc. No. 547], the government's Response [Doc. No. 552], Defendant's Reply [Doc. No. 554], Defendant's

³⁷ The Court notes that this is not a situation where an inmate requested compassionate release based on their medical condition and then filed a motion based on COVID-19 amplifying the risk that their medical condition poses to their health.

³⁸ Doc. No. 550 at 15.

³⁹ 18 U.S.C. § 994(t).

⁴⁰ U.S.S.G. § 1B1.13.

⁴¹ *Abdul-Akbar*, 901 F.2d at 333. Because the last time that Rashid filed a document in Case No. 15-cv-274, which is the § 2241 action, was in 2016, the Court will not extend the Order to that action.

from the warden to care for his sister, the Court cannot consider his health and the COVID-19 pandemic.³⁷

To the extent that Rashid's motion is based on the need to care for his sister, the motion will be denied. Rashid argues that the First Step Act "does permit Compassionate Release to for instance 'care for siblings.'"³⁸ However, the United States Sentencing Commission, to which Congress has delegated the authority to define "extraordinary and compelling reasons,"³⁹ has not identified caring for a sibling as such a reason, and Rashid has not otherwise shown that release is warranted in this case.⁴⁰ Therefore, Rashid's motion for compassionate release will be denied.

III. Government's Request to Extend June 2016 Order

The Court finds that in light of Rashid's continued "pattern of conduct from which [the Court] can only conclude that [he] is intentionally abusing the judicial process and will continue to do so unless restrained," and as his § 2255 motion has been finally decided, the Court will grant the government's request and extend the June 20, 2016 Order to any filings related to the § 2255 motion.⁴¹ The extension does not apply to a properly-exhausted motion for compassionate release.

AND NOW, this 3rd day of August 2020, upon consideration of Defendant's Motion for Permission to File a Motion for Relief from Judgment Pursuant to Rule 60(b)(4) [Doc. No. 547], the government's Response [Doc. No. 552], Defendant's Reply [Doc. No. 554], Defendant's

³⁷ The Court notes that this is not a situation where an inmate requested compassionate release based on their medical condition and then filed a motion based on COVID-19 amplifying the risk that their medical condition poses to their health.

³⁸ Doc. No. 550 at 15.

³⁹ 18 U.S.C. § 994(t).

⁴⁰ U.S.S.G. § 1B1.13.

⁴¹ *Abdul-Akbar*, 901 F.2d at 333. Because the last time that Rashid filed a document in Case No. 15-cv-274, which is the § 2241 action, was in 2016, the Court will not extend the Order to that action.

Emergency Motion for Bail Pending Final Disposition of Habeas Proceedings, Or, In The Alternative, A Grant of Compassionate Release Pursuant to The First Step Act of 2018 [Doc. No. 550], the government's Response [Doc. No. 553] and Defendant's Reply [Doc. No. 555], it is hereby **ORDERED** that:

- 1) Defendant's Motion for Permission to File a Motion for Relief from Judgment Pursuant to Rule 60(b)(4) [Doc. No. 547] is **DENIED**.
- 2) There is no probable cause to issue a certificate of appealability.⁴²
- 3) The government's request that the Court's June 20, 2016 Order should be extended to also bar any further litigation of Rashid's § 2255 claims is **GRANTED**. Defendant is enjoined from filing motions in Case No. 08-493 that seek to re-litigate issues related to his criminal convictions that have been decided. Before filing a motion or other document in Case No. 08-493, Defendant must seek leave of Court and must certify that: (1) the claims he wishes to present are new claims never before raised and disposed of on the merits by any federal court; (2) he believes the facts alleged in his pleading to be true; and (3) he knows of no reason to believe his claims are foreclosed by controlling law.
- 4) Any further actions taken by Defendant in violation of this Order, may result in a Rule to Show Cause as to why he should not be held in contempt and face sanctions and other penalties caused by his disregard for this Court's rulings.

⁴² "To appeal the District Court's disposition of the Fed.R.Civ.P. 60(b) motion, [Rashid] is required to obtain a COA." *Hickman v. Cameron*, 531 F. App'x 209, 211 (3d Cir. 2013) (citing *Morris v. Horn*, 187 F.3d 333, 341 (3d Cir. 1999)). There is no basis for concluding that "reasonable jurists could debate whether . . . the [Rashid's motion] should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal citation omitted).

5) Defendant's Emergency Motion for Bail Pending Final Disposition of Habeas Proceedings, Or, In The Alternative, A Grant of Compassionate Release Pursuant to The First Step Act of 2018 [Doc. No. 550] is **DENIED** with prejudice, except as to Rashid's motion for compassionate release based on the COVID-19 pandemic which is denied without prejudice to Rashid refiling only if he demonstrates that he has exhausted his administrative remedies as to that request.

It is so **ORDERED**.

BY THE COURT:

/s/ **Cynthia M. Rufe**

CYNTHIA M. RUGE, J.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-2995

UNITED STATES OF AMERICA

v.

AMIN A. RASHID,

Appellant

(District Court No.: 2-08-cr-00493-001)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY and PHIPPS, 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 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.

APPENDIX "C"

BY THE COURT,

s/ THOMAS L. AMBRO
Circuit Judge

Dated: February 9, 2021
Sb/cc: Amin A. Rashid
Vineet Gauri, Esq.