UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 15 2021

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

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JASON C. YOUKER, Defendant-Appellant.	No. 20-36019 D.C. No. 2:14-cr-00152-RMP-1 Eastern District of Washington, Spokane ORDER

Before: THOMAS, Chief Judge, and BRESS, Circuit Judge.

Appellant's motion for reconsideration (Docket Entry No. 3) is denied. *See* 9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 14 2020

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

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JASON C. YOUKER, Defendant-Appellant.	No. 20-36019 D.C. No. 2:14-cr-00152-RMP-1 Eastern District of Washington, Spokane ORDER

Before: BYBEE and HURWITZ, 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 [section 2255 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).

Any pending motions are denied as moot.

DENIED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 2 2020

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

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JASON C. YOUKER, Defendant-Appellant.	No. 20-35737 D.C. No. 2:14-cr-00152-RMP-1 Eastern District of Washington, Spokane ORDER

Before: BERZON and BADE, Circuit Judges.

This appeal is from the denial of appellant's Federal Rule of Civil Procedure 60(b) motion. The request for a certificate of appealability (Docket Entry No. 4) is denied because appellant has not shown "that (1) jurists of reason would find it debatable whether the district court abused its discretion in denying the Rule 60(b) motion and, (2) jurists of reason would find it debatable whether the underlying section 2255 motion states a valid claim of the denial of a constitutional right." *United States v. Winkles*, 795 F.3d 1134, 1143 (9th Cir. 2015); *see also* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Any pending motions are denied as moot.

DENIED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 7 2020

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JASON C. YOUKER,

Defendant-Appellant.

No. 19-36108

D.C. Nos. 2:18-cv-00379-SMJ
2:14-cr-00152-SMJ-1
Eastern District of Washington,
Spokane

ORDER

Before: McKEOWN and BADE, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 5) is denied. *See* 9th Cir. R. 27-10. Appellant's motion to expedite (Docket Entry No. 6) is denied as moot.

No further filings will be entertained in this closed case.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 30 2020

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JASON C. YOUKER,

Defendant-Appellant.

No. 19-36108

D.C. Nos. 2:18-cv-00379-SMJ
2:14-cr-00152-SMJ-1
Eastern District of Washington,
Spokane

ORDER

Before: WARDLAW and BENNETT, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) is denied because appellant has not shown that "jurists of reason would find it debatable whether the [section 2255 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); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, v. JASON C. YOUKER, Defendant.	NO: 2:14-CR-152-RMP-1 ORDER DENYING MOTION FOR CERTIFICATE OF APPEALABILITY

On August 7, 2020, this Court issued an Order Denying Defendant's Motion to Vacate Judgment Pursuant to Fed. R. Civ. P. 60(b)(6). ECF No. 759. The Court determined that Defendant did not present the requisite extraordinary circumstances to support reopening the judgment and that "any manifestations of bias stem solely from [the district court's] adverse ruling on Defendant's section 2255 petition, a petition on which the Ninth Circuit already denied a certificate of availability . . . ." *Id.* at 14. However, the Court omitted a further finding regarding whether Defendant had satisfied the standard for issuance of a certificate of appealability. Consequently,

APPX-C

the United States Court of Appeals for the Ninth Circuit has remanded the matter to this Court on the limited issue of the certificate of appealability. ECF No. 765.

A court may issue a certificate of appealability only upon "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c). The U.S. Supreme Court has interpreted section 2253(c) as follows:

> Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.

Slack v. McDaniel, 529 U.S. 473, 484 (2000).

The Court found that Defendant did not present extraordinary circumstances to justify reopening the final judgment because he presented no manifestations of bias beyond the adverse ruling to attack the integrity of the section 2255 proceeding. ECF No. 759 at 14; *see also United States v. Nelson*, 718 F.2d 315, 321 (9th Cir. 1983) ("Adverse rulings do not constitute the requisite bias . . . even if they were erroneous."). Given the settled state of the law regarding adverse rulings and alleged bias, the Court does not find that Defendant's Motion to Vacate Judgment Pursuant to Fed. R. Civ. P. 60(b)(6), or the Court's resolution of the Motion, presents any matter that reasonable jurists would debate or dispute. *See Slack*, 529 U.S. at 484. Therefore, the Court **denies Defendant a certificate of appealability**.

/ / /

/ / /

APPX-C

IT IS SO ORDERED. The District Court Clerk is directed to enter this Order and provide copies to Defendant, counsel, and the United States Court of Appeals for the Ninth Circuit.

DATED August 26, 2020.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, v. JASON C. YOUKER, Defendant.	NO: 2:14-CR-152-RMP-1 ORDER DENYING DEFENDANT'S MOTION TO VACATE JUDGMENT PURSUANT TO FED. R. CIV. P. 60(B)(6)

BEFORE THE COURT is a Motion to Vacate Judgment Pursuant to Fed. R. Civ. P. 60(b)(6), ECF No. 737, by Defendant Jason C. Youker. *See also* ECF No. 745 (Defendant's miscellaneous motion seeking for his Motion at ECF No. 737 to be considered a motion for relief under Rule 60(b)(6)). The Court has reviewed Defendant's Motions, ECF Nos. 737 and 745; the Government's response in opposition, ECF No. 747; Defendant's reply, ECF No. 749; the remaining docket; and is fully informed.

/ / /

/ / /

BACKGROUND

By an Indictment issued on October 15, 2014, the Grand Jury charged Youker and two co-defendants with charges related to an alleged conspiracy to distribute heroin and methamphetamine. ECF No. 16. An Assistant Federal Defender appeared on behalf of Youker on September 22, 2014. ECF No. 13.

On November 4, 2014, a Superseding Indictment was filed that included additional counts of distribution and counts involving the use of a telephone in the commission of a drug trafficking offense. ECF No. 59. At a hearing also on November 4, 2014, Youker sought removal of the assigned Assistant Federal Defender from the case and appointment of new counsel. ECF No. 220 at 2–3. The Court granted the motion and a Criminal Justice Act ("CJA") attorney was substituted as defense counsel. ECF Nos. 69; 220 at 3.

On March 12, 2015, Youker asked to dismiss his second appointed counsel and to proceed pro se. ECF No. 128. The Court allowed Youker to proceed pro se with CJA counsel serving on standby. ECF No. 132. Youker filed numerous pretrial motions, including a motion and objections regarding discovery, approximately five motions to suppress, a motion for a *Franks*[1] hearing, and six motions to dismiss the Superseding Indictment. *See* ECF Nos. 147, 158, 168, 200, 253 295, 351 378, 398,

[1] *Franks v. Delaware*, 438 U.S. 154 (1978) (requiring an evidentiary hearing where defendant alleges a deliberate falsehood or reckless disregard for the truth and supports those allegations with an offer of proof).

374, and 412. In October 2015, Youker sought Judge Mendoza's recusal by alleging that Judge Mendoza was biased against Youker and had "been working together [with the Government] since the beginning with lies." ECF No. 342 at 8. Youker also sought to disqualify his co-defendants' counsel by alleging conspiracy and ineffectiveness related to information about plea agreement negotiation that Youker allegedly learned when his co-defendant "confided" in him during custodial transport and while waiting for a pretrial hearing. ECF No. 255 at 1; *see also* ECF No. 256. The Court denied Youker's motions. *See* ECF Nos. 228, 264, and 388.

On September 1, 2015, Youker's co-defendants pleaded guilty to some of the counts charged in the Superseding Indictment. ECF No. 747 at 5. A Second Superseding Indictment was filed on October 6, 2015, charging Youker with 35 counts related to the distribution of controlled substances and the unlawful possession of firearms. ECF No. 338. The Government notified the Court and Youker of its intent to dismiss two of the counts of the indictment on November 27, 2015. ECF No. 424. On November 30, 2015, trial began on the remaining 33 charges against Youker. ECF No. 431.

On December 16, 2015, the jury found Defendant guilty of 32 counts related to conspiracy to distribute methamphetamine and heroin, and unlawful possession of firearms and ammunition in furtherance of those crimes. ECF No. 501. Youker filed

a post-verdict motion to dismiss based on alleged *Brady*[2] violations. ECF No. 513. Youker subsequently moved for re-appointment of CJA counsel for sentencing purposes on March 14, 2016. ECF Nos. 544, 545. On March 23, 2016, the Court re-appointed CJA counsel and denied the motion to dismiss as moot subject to renewal by defense counsel. ECF No. 554. Defense counsel did not renew the motion.

The Court sentenced Defendant to a 20-year term of incarceration on May 24, 2016, the mandatory minimum for three of Defendant's counts of conviction. ECF No. 583. The sentencing guideline range applicable to Defendant was 360 months to life. ECF No. 629 at 16. As stated by the Government in its brief, and supported by the docket:

> [At sentencing, the] government asserted that the Guideline range was appropriate; however, if the court was inclined to mitigate the sentence, the government recommended a sentence of 328 months. The district court indicated that it had thought 'very seriously' about imposing a Guideline sentence. In the end, the district court followed the recommendation of Defendant's counsel and imposed a sentence of 240 months.

ECF No. 747 at 7 (citing sentencing hearing transcript at ECF No. 629 at 21–22, 28–29, and 39).

The Court entered judgment on June 2, 2016, and Youker appealed the same day. ECF Nos. 583 and 585. Youker was represented by Criminal Justice Act

---

[2] *Brady v. Maryland*, 373 U.S. 83 (1963) (holding that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.").

counsel on appeal. ECF No. 592. Youker appealed his conviction on the grounds that he was denied his Sixth Amendment right to self-representation while incarcerated pre-trial and Fifth Amendment right to due process and received ineffective assistance of standby counsel. Youker also argued that the district court abused its discretion by restricting his access to discovery and denying his motion to continue the trial.

The United States Court of Appeals for the Ninth Circuit affirmed the judgment on the merits on December 7, 2017, finding no error in the discovery procedures used by the Court or on the other grounds raised by Defendant. ECF No. 655. After granting Youker a 30-day extension to file a petition for panel rehearing and a petition for rehearing en banc, the Ninth Circuit denied both petitions that Youker filed. ECF Nos. 656 and 660. The Ninth Circuit issued its mandate on February 22, 2018. ECF No. 667. Youker next timely filed a petition for writ of certiorari, which the United States Supreme Court denied on May 29, 2018. ECF No. 677.

On December 7, 2018, Defendant petitioned under 28 U.S.C. § 2255 for relief from his conviction. ECF No. 687. On February 12, 2019, the Court screened the motion and denied it as to Defendant's contentions regarding discovery issues, alleged misconduct and deficient representation by standby counsel, alleged ineffective assistance by appellate counsel, and alleged error in denying Defendant's alibi defense. ECF No. 693. However, the Court required the Government to

respond to Defendant's arguments regarding *Franks* and *Brady* issues. *Id.* On April 1, 2019, the Court entered an order appointing the Federal Defender's office to assist Defendant with his section 2255 petition. ECF No. 707; *see also* ECF No. 708 (Notice of Appearance). Nevertheless, Defendant filed a pro se reply brief regarding his section 2255 petition on August 14, 2019. ECF No. 720. The Court dismissed Defendant's section 2255 petition on November 12, 2019, and denied Defendant a certificate of appealability. ECF No. 726. Defendant sought reconsideration of the Court's resolution of his section 2255 petition, and the Court denied the motion on December 10, 2019. ECF Nos. 729 and 730.

On February 10, 2020, Youker filed the instant motion to vacate the criminal judgment based on Defendant's allegation that he learned new information on approximately December 9, 2019, during a custodial transport in which he learned from another prisoner that a criminal defense law firm that Youker had criticized and accused of wrongdoing was composed of Judge Mendoza's wife and Judge Mendoza's former law partner. ECF No. 737 at 6. Youker alleges that he contacted the law firm in December 2014, but did not hire them after learning the fee, which he alleges was inflated because he is white. *Id.* Youker further alleges that he called Judge Mendoza's wife a "Mexican cartel whore" in his December 2014 phone call to the law firm, but did not learn about her relationship to Judge Mendoza until December 2019. *Id.* Youker alleges he learned that Judge Mendoza had "worked at [the] lawfirm prior as a mexican [sic] lawyer before becoming a judge." ECF No.

737 at 6. Youker alleges that the inmate who alerted him as to the relationship had a negative experience with the law firm. *Id.*

Upon the filing of Youker's instant motion, Judge Mendoza recused himself from any further proceedings in this matter, and the Chief Judge for the District reassigned the case to the undersigned. ECF Nos. 738 and 739.

On June 30, 2020, the Ninth Circuit denied Youker's request for a certificate of appealability for his first habeas petition on finding that he had "not shown that 'jurists of reason would find it debatable whether the [section 2255 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.'" *See* ECF No. 755-1 (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

LEGAL STANDARDS

Federal prisoners claiming the right to be released on the ground that their sentence violates the Constitution or laws of the United States may petition for relief under 28 U.S.C. § 2255. "As a general rule, § 2255 provides the exclusive procedural mechanism by which a federal prisoner may test the legality of detention." *Harrison v. Ollison*, 519 F.3d 952, 955 (9th Cir. 2008). If the district court denies the relief sought in the section 2255 petition, the prisoner may not appeal that denial without first obtaining a certificate of appealability under 28 U.S.C. § 2253(c)(1)(B). To obtain this certificate, the prisoner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2), (3).

Additionally, prisoners are generally limited to one petition under section 2255 and may not bring a "second or successive" petition unless it satisfies the high bar of 28 U.S.C. § 2255(h). Section 2255(h) provides that such a petition cannot be considered unless it has first been certified by the court of appeals to contain either "(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense," or "(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. § 2255(h).

However, district courts have jurisdiction to consider motions under Fed. R. Civ. P. 60(b) in habeas proceedings so long as the motion attacks some defect in the integrity of the habeas proceedings, rather than the substance of the court's resolution of the claim on the merits. *See Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005).

Federal Rule of Civil Procedure 60(b) permits litigants to request reconsideration of a final judgment, order, or proceeding entered against them. Rule 60(b) lists five circumstances that may justify reopening a final judgment—including, for example, newly discovered evidence, fraud by the opposing party, or a mistake committed by the court—and a sixth, catch-all category. The sixth ground for relief allows a court to reconsider a final judgment for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6).

A party seeking relief under Rule 60(b)(6) must satisfy three requirements: (1) the motion cannot be premised on another ground provided in the Rule, *see Liljeberg v. Health Serv. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988); (2) it must be filed "within a reasonable time," *see* Fed. R. Civ. P. 60(c)(1); and (3) it must demonstrate "extraordinary circumstances" justifying reopening the judgment, *see Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 393 (1993). Extraordinary circumstances occur where there are "other compelling reasons" for opening the judgment. *Klapprott v. United States*, 335 U.S. 601, 613 (1949).

When faced with a motion under Rule 60(b), district courts are tasked with ascertaining whether the motion is a "true" Rule 60(b) motion, or whether it is a disguised second or successive section 2255 petition. *See Washington*, 653 F.3d at 1159–60. Although the Supreme Court has not established a bright-line rule for identifying true Rule 60(b)(6) motions, it has held that a Rule 60(b) motion attacking some defect in the integrity of the habeas proceedings qualifies. *See id.* (discussing *Gonzalez*, 545 U.S. at 528). Such defects may include "fraud on the habeas court" and allegations that a previous ruling precluding a merits determination, such as denial for failure to exhaust, procedural default, or a statute-of-limitations bar, was in error. *Jones v. Ryan*, 733 F.3d 825, 834 (9th Cir. 2013) (citing *Gonzalez*, 545 U.S. at 532 n. 4–5). On the other hand, if a motion presents one or more "claims," "in effect ask[ing] for a second chance to have the merits determined favorably," it is properly

construed as a second or successive § 2255 motion, not a Rule 60(b) motion. *Id.* at 835.

DISCUSSION

In seeking to set aside the criminal judgment in this matter pursuant to Fed. R. Civ. P. 60(b)(6), Youker argues that the United States District Court judge previously assigned to this case, Judge Mendoza, was biased by Defendant's "associations" with Judge Mendoza's spouse and former law partner. ECF No. 737 at 3. Youker further argues that, in resolving Youker's section 2255 petition, Judge Mendoza "follows a pattern of allowing law enforcement to provide unprecedented amounts of methamphetamine and heroin to be distributed on americans [sic]." ECF No. 749 at 2. Specifically, Youker argues that Judge Mendoza's bias is evidenced by ignoring allegedly "criminal behavior" by the officers whose investigation lead to Youker's charges and conviction, including, verbatim:

> 1. Unprecedented amounts of drugs were distributed by officers in this case at bar through their informants, making this an unprecedented case in america. [sic]
> 2. A informant used those narcotics to rape a woman[.]
> 3. A informant used those narcotics providing a pregnant mother[.]
> 4. The provided drugs to informants infected toddler babies[.]
> 5. The provided drugs were focused at specific citizens in the community[.]

Id.

The Government responds that Defendant's motion should be denied because it is "functionally a second motion pursuant to 28 U.S.C. § 2255 and it does not meet the criteria for a second motion under 28 U.S.C. § 2255(h)." ECF No. 747 at 13.

APPX-D

The Government further argues that Defendant does not identify any error for this Court to correct with regard to the section 2255 proceeding: "The district court was generous in its procedural rulings and its determination that the record conclusively established that Defendant was not entitled to relief can be objectively analyzed based on the precedents cited by the district court. Thus, there is no nexus between the bias alleged by Defendant and any aspect of the § 2255 proceeding other than the district court's conclusion itself . . . ." *Id.* at 17.

As a preliminary matter, the Court finds that it need not resolve the issue of whether to treat Defendant's Fed. R. Civ. P. 60(b)(6) Motion as distinct from a second or successive habeas petition because Defendant's Motion fails on the merits under Rule 60(b)(6).

It is conceivable that the judicial bias or perceived bias of a judge could rise to the level of the "extraordinary circumstances" required for setting aside a judgment under Rule 60(b)(6). *See Pioneer Inv. Servs.*, 507 U.S. at 393. However, Rule 60(b)(6) should be 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). Accordingly, the Rule allows relief only when a party can establish that "extraordinary circumstances prevented [it] from taking timely action to prevent or correct an erroneous judgment." *United States v. Washington*, 394 F.3d 1152, 1157 (9th Cir. 2005). Specifically, the party "must demonstrate both injury and circumstances beyond his control that prevented him from proceeding with . . . the

action in a proper fashion." *Cmty. Dental Services v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 2002).

"The Supreme Court has long established that the Due Process Clause guarantees a criminal defendant the right to a fair and impartial judge." *Larson v. Palmateer*, 515 F.3d 1057, 1067 (9th Cir. 2008). A judicial bias claim requires the party seeking relief to "overcome a presumption of honesty and integrity in those serving as adjudicators." *Withrow v. Larkin*, 421 U.S. 35, 47, (1975).

A movant may show judicial bias in one of two ways: demonstrating the judge's actual bias; or showing that the judge had an incentive to be biased sufficiently strong to overcome the presumption of judicial integrity. *See Paradis v. Arave*, 20 F.3d 950, 958 (9th Cir. 1994). "[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 555 (1994). "It is not sufficient to simply urge that a judge is biased because [he] has ruled against the litigant in this or another action; it is incumbent on the party seeking recusal to show an adverse ruling reflects bias, and petitioner has not done so." *Wilkins v. Macomber*, No. 16-cv-00221-SI, 2019 U.S. Dist. LEXIS 33255, at *3 (N.D. Cal. Mar. 1, 2019).

Defendant's allegations that the Court's bias was evidenced when it "ignored" Defendant's allegations of wrongful conduct by investigating officers and the

informants are duplicative of Defendant's arguments that were in the record before the Ninth Circuit when it denied Defendant a certificate of appealability for his section 2255 petition. *See* ECF Nos. 729 at 3; 755-1. Defendant does not point to any alleged manifestations of "a deep-seated favoritism or antagonism" with respect to these allegations beyond rejecting them as unfounded. Thus, Defendant does not meet his burden of showing either actual bias or any incentive to be biased sufficiently strong to overcome the presumption of judicial integrity. *See Paradis*, 20 F.3d at 958.

Likewise, Defendant does not offer any purported manifestations of bias in the Court's resolution of the section 2255 petition, or handling of any other stage of the litigation, with respect to the alleged December 2019 revelation that Judge Mendoza is related to and was formerly professionally associated with individuals at a law firm that Defendant briefly contacted in 2014. There is no indication, and, indeed, Defendant does not allege, that Judge Mendoza was aware of Defendant's limited contact with the law firm or the insults that Defendant allegedly spoke regarding Judge Mendoza's spouse, and, even if the Court were to credit Defendant's entire account as true, the Court cannot find any viable challenge to the integrity of the habeas proceeding in this matter based on such attenuated allegations. Defendant does not make any argument as to how such a remote, and limited interaction had any impact on the Court's handling of his section 2255 petition. Defendant does not present any extraordinary circumstances that support reopening the judgment. *See*

Klapprott, 335 U.S. at 613. Consequently, because any manifestations of bias stem solely from an adverse ruling on Defendant's section 2255 petition, a petition on which the Ninth Circuit already denied a certificate of availability, Defendant's Motion under Fed. R. Civ. P. 60(b)(6) is denied.

Accordingly, **IT IS HEREBY ORDERED**:

1. Defendant's Motion to Vacate the Judgment Pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, **ECF No. 737**, is **DENIED**.

2. Defendant's Jurisdiction Motion Pursuant to Rule 60(b)(6), ECF No. 745, is **DENIED AS MOOT**.

IT IS SO ORDERED. The District Court Clerk is directed to enter this Order and provide copies to Defendant and to counsel.

DATED August 7, 2020.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, v. JASON C. YOUKER (01), Defendant.	No. 2:14-cr-00152-SMJ-01 **ORDER OF RECUSAL**

For reasons that are unnecessary to recite here, the Court deems it appropriate to recuse itself, pursuant to 28 U.S.C. § 455, from any further proceedings in the above-captioned criminal matter.

Accordingly, **IT IS HEREBY ORDERED** that this case be returned to the Clerk's Office for random reassignment to another Judge in this District.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel.

DATED this 11th day of February 2020.

SALVADOR MENDOZA, JR.
United States District Judge

APPX-E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JASON C. YOUKER (01),

Defendant.

No. 2:14-cr-00152-SMJ-01

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION

On November 12, 2019, the Court dismissed Defendant Jason Youker's motion, brought under 28 U.S.C. § 2255, to vacate, set aside, or correct the sentence this Court imposed after a jury convicted him of thirty-four counts arising out of a significant drug-distribution conspiracy.[1] ECF No. 726. Defendant now moves the Court to reconsider its ruling. ECF No. 729. For the reasons that follow, the Court finds Defendant has not established manifest error or injustice in its ruling, has not come forward with new evidence warranting reconsideration, and has not shown the governing law has changed in the interim. Accordingly, he has failed to show that reconsideration is warranted, and the motion is denied.

[1] The Court's November 12, 2019 Order dismissed Grounds Five and Six of the position, ECF No. 687. *See* ECF No. 726 at 8. The Court previously dismissed the remaining seven grounds of Defendant's petition without directing a response from the Government. *See* ECF No. 693.

APPX-F

LEGAL STANDARD

Because Defendant filed his motion for reconsideration within twenty-eight days after entry of judgment, the Court treats it as a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). *See Rishor v. Ferguson*, 822 F.3d 482, 489–90 (9th Cir. 2016); *Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 898–99 (9th Cir. 2001).

Altering or amending a judgment under Rule 59(e) "is an 'extraordinary remedy' usually available only when (1) the court committed manifest errors of law or fact, (2) the court is presented with newly discovered or previously unavailable evidence, (3) the decision was manifestly unjust, or (4) there is an intervening change in the controlling law." *Rishor*, 822 F.3d at 491–92 (quoting *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011)). A Rule 59(e) motion "may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000); *accord Rishor*, 822 F.3d at 492.

DISCUSSION

Defendant's motion for reconsideration does no more than allege error in the Court's legal and factual conclusions when it dismissed his petition. *See, e.g.*, ECF No. 729 at 9 ("This Court needs to review the plain language set forth in

ground two and consider the law and relevant facts."). He reiterates the same arguments raised in the original petition but fails to present a sufficient basis to find those conclusions were the result of manifest errors of law or fact. *See Rishor*, 822 F.3d at 491–92. And although Defendant evidently takes issue with the Court's legal rulings, he fails to persuasively establish that they were manifestly unjust. *Id.*; *see also* ECF No. 729 at 15. Finally, Defendant has not come forward with newly discovered or previously unavailable evidence or directed the Court to an intervening change in the law. *See Rishor*, 822 F.3d at 491–92. Accordingly, Defendant fails to establish a sufficient basis for the Court to reconsider its prior rulings dismissing his petition. Defendant likewise fails to establish that reasonable jurists could differ as to the resolution of his constitutional claims, and the Court therefore declines to reconsider the denial of a certificate of appealability. *See* ECF No. 729 at 2; 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000).

Accordingly, **IT IS HEREBY ORDERED**:

Defendant's Motion Pursuant to Federal Rule of Civil Procedure 59(e), **ECF No. 729**, is **DENIED**.

//

//

//

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order, provide copies to *pro se* Petitioner, counsel for the Government, and the United States Marshals Service.

DATED this 11th day of December 2019.

SALVADOR MENDOZA, JR.
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JASON C. YOUKER (01),

Defendant.

No. 2:14-cr-00152-SMJ-01

ORDER DISMISSING DEFENDANT'S § 2255 PETITION

After a two-week trial, a jury found Defendant Jason Youker guilty of thirty-four counts arising out of a drug-distribution conspiracy, and this Court sentenced him to twenty years' imprisonment. ECF Nos. 501, 583. After numerous motions attacking the judgment and an unsuccessful appeal, Defendant brought a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. *See* ECF No. 687. The Court determined that most of the grounds on which Defendant sought relief were meritless but directed the Government to respond to two of Defendant's allegations. The Government responded, and Defendant replied. ECF No. 698; ECF No. 720-1 at 35–55. It is now clear that Defendant is not entitled to any relief on his petition, and the Court therefore dismisses it without an evidentiary hearing. *See* 28 U.S.C. § 2225(b).

LEGAL STANDARD

A prisoner incarcerated pursuant to the judgment of a federal court may seek habeas corpus relief by petitioning the sentencing court to vacate, set aside, or correct the sentence if it "was imposed in violation of the Constitution or laws of the United States." 28 U.S.C. § 2255(a). Where the "motion and the files and records of the case conclusively show that the prisoner is entitled to no relief," the Court may dismiss the petition without an evidentiary hearing. *Id.* at § 2255(b); *Blackledge v. Allison*, 431 U.S. 63, 74 n.4 (1977). In considering whether to summarily dismiss a § 2255 motion, the question is whether "the movant has made specific factual allegations that, if true, state a claim on which relief could be granted." *United States v. Schaflander*, 743 F.2d 714, 717 (9th Cir. 1984). The Court must liberally construe a *pro se* § 2255 motion. *Orona v. United States*, 826 F.3d 1196, 1199 (9th Cir. 2016).

DISCUSSION

After screening Defendant's petition, the Court determined that the record conclusively established that seven out of the nine grounds on which he sought relief were meritless. *See* ECF No. 693 at 26. The Court directed the Government to respond to grounds five and six of the petition. *Id.* The Government did so, and Defendant submitted a reply. ECF No. 698; ECF No. 720-1 at 35–55. Having reviewed these filings and the record in this matter, it is now clear that Defendant

is not entitled to relief on either basis, and an evidentiary hearing is unnecessary.

A. Ground Five: *Franks* Issue

Ground five of the petition alleges law enforcement omitted material facts from affidavits used to obtain search warrants from which evidence used against Defendant at trial was obtained. *See* ECF No. 687 at 13–14; ECF No. 720-1 at 46. Specifically, Defendant alleges that officers omitted from their affidavits the fact that after controlled purchases of narcotics from Defendant, they allowed confidential informants to distribute a portion of the drugs so as to avoid alerting Defendant of the investigation. ECF No. 687 at 13.

Defendant's argument falls squarely within the doctrine of *Franks v. Delaware*, 438 U.S. 154 (1978). *Franks* held that under the Fourth Amendment, a criminal defendant may challenge the validity of a search warrant, and move to suppress evidence, if the affidavits presented to the issuing magistrate included intentionally or recklessly false statements or omissions that were material to the finding of probable cause. *See United States v. Lefkowitz*, 618 F.2d 1313, 1317 (9th Cir. 1980) (citing *Franks*, 438 U.S. at 154); *United States v. Stanert*, 762 F.2d 775, 780–81 (9th Cir. 1985).

However, it is well settled that, absent exceptional circumstances, "error on a fourth amendment issue does not support a writ of habeas corpus" such as Defendant seeks here. *Newman*, 790 F.3d at 879 (quoting *Hampton v. Wyant*, 296

F.3d 560, 563 (7th Cir. 2002)). The Court is accordingly prohibited from considering Defendant's *Franks* argument unless he was denied a "full and fair opportunity" to assert that claim at trial. ECF No. 720-1 at 54; *United States v. Hearst*, 638 F.2d 1190, 1196 (9th Cir. 1980) (citing *Stone v. Powell*, 428 U.S. 465, 494 (1976)); *Newman v. Wengler*, 790 F.3d 876, 878 (9th Cir. 2015). The critical inquiry is whether he had the *opportunity* to litigate his claim, not whether he in fact took advantage of that opportunity, "or even whether the claim was correctly decided." *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 899 (9th Cir. 1996).

Defendant's conclusory assertions that he was denied such an opportunity are unpersuasive. *See* ECF No. 687 at 14. Defendant was provided thousands of pages of discovery, including fifteen search warrants and accompanying affidavits describing at least one instance where a confidential informant was allowed to distribute narcotics purchased from Defendant. *See* ECF No. 698 at 4, 10. And to substantiate his *Franks* claim, Defendant appears to recount his memory of several of those transactions, asserting he sold the informants more drugs than law enforcement reported in their affidavits. *See* ECF No. 720-1 at 2–6. Defendant brought repeated suppression motions prior to trial—including one styled as a *Franks* motion. *See* ECF Nos. 147, 156, 158, 295, 378, 398. Though he obviously had access at that time to the evidence on which he relies now, he did not raise this argument then or on appeal. *See* ECF No. 655 at 2. Defendant fails to show

that he was denied a full and fair opportunity to assert this claim prior to his § 2255 motion and thus, he is barred from raising it now. *Hearst*, 638 F.2d at 1196; *Stone*, 428 U.S. at 494.

As the record conclusively establishes that Defendant is not entitled to relief on ground five of his petition, the Court dismisses it without an evidentiary hearing. 28 U.S.C. § 2255(b).

B. Ground Six: *Brady* Issue

The sixth ground of Defendant's petition alleges the Government withheld or delayed the disclosure of several items of evidence. *See* ECF No. 687 at 14–17. Just as above, Defendant asserts that law enforcement knowingly permitted confidential informants to distribute narcotics but failed to disclose they had done so. *Id.* at 14–15. Defendant also claims that the Government delayed disclosing that a confidential informant gave a small quantity of methamphetamine to another informant until the middle of trial. ECF No. 687 at 16–17.

In a criminal case, the Government must disclose to the Defendant all evidence "that is both favorable to the accused and 'material either to guilt or to punishment.'" *United States v. Bagley*, 473 U.S. 667, 674 (1985) (quoting *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). To prevail, a Defendant asserting a *Brady* claim must show, for evidence that was never disclosed, that the Government "'wilfully or inadvertently' suppressed the information." *Williams v. Ryan*, 623

F.3d 1258, 1264 (9th Cir. 2010) (citing *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999)). When the Defendant challenges the timeliness of the Government's disclosure, the proper inquiry is "whether the lateness of the disclosure so prejudiced [the Defendant's] preparation or presentation of his defense that he was prevented from receiving his constitutionally guaranteed fair trial." *United States v. Miller*, 529 F.2d 1125, 1128 (9th Cir. 1976) (citing *United States v. Hibler*, 463 F.2d 455, 459 (9th Cir. 1972)).

Evidence qualifies as material when "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id.* at 682; *see also United States v. Tham*, 884 F.2d 1262, 1266 (9th Cir. 1989). Therefore, evidence negating a jurisdictional element of the charged offense is material. *United States v. Mejia-Mesa*, 153 F.3d 925, 929 (9th Cir. 1998). Significant impeachment evidence may also be material. *See United States v. Price*, 566 F.3d 900, 907 (9th Cir. 2009) (citing *Giglio v. United States*, 405 U.S. 150, 154 (1972)).

Even assuming Defendant could produce the evidence he claims the Government withheld—as he seeks to do through an evidentiary hearing—he has failed to show that such evidence is material either to guilt or punishment. *Bagley*, 473 at 674 (quoting *Brady*, 373 U.S. at 87). There was substantial evidence of Defendant's guilt of the crimes with which he was charged—including narcotics

purchased during controlled buys, recordings of his involvement in those transactions, firearms used in furtherance of the conspiracy, and testimony of others involved in his scheme. The evidence he claims was suppressed or delayed would have done little to impeach the credibility of the confidential informants, who were known drug dealers, and nothing to negate any element of the charged offenses. *See* ECF No. 616 at 82–85. In short, while impeachment evidence may be material under *Brady*, Defendant has failed to establish "a reasonable probability" that *this* evidence would have changed the outcome of the trial. *Bagley*, 473 U.S. at 682.

This claim is also procedurally defaulted. *See United States v. Frady*, 456 U.S. 152, 167 (1982). Defendant was required to show "cause" for his failure to raise his *Brady* claim at trial, and that his inability to do so resulted in "actual prejudice."[1] *Id.*; ECF No. 693 at 4–5 (notifying Defendant that claims may be procedurally defaulted). As set out above, the evidence Defendant relies on to establish his *Franks* argument—that the Government withheld evidence that law enforcement allowed narcotics to "walk" after controlled buys—was in his possession before trial. *See* ECF No. 698 at 4, 10; ECF No. 720-1 at 2–6. Just as Defendant fails to establish that he was denied a full and fair opportunity to raise

[1] Defendant could have also avoided procedural default by asserting actual innocence, though he has not done so. *See Bousley v. United States*, 523 U.S. 614, 622 (1998).

his *Franks* argument, he fails to establish that some "external impediment" prevented him from raising this *Brady* argument at trial or on direct appeal. *Murray v. Carrier*, 477 U.S. 478, 492 (1986). And because the Court concludes that even with the evidence Defendant claims was suppressed, there is no reasonable probability of a different outcome at trial, he has failed to show actual prejudice. *Frady*, 456 U.S. at 167–68; *United States v. Mejia-Mesa*, 153 F.3d 925, 929 (9th Cir. 1998); *United States v. Hernandez*, 94 F.3d 606, 610 (10th Cir. 1996)) (applying *Brady*'s "materiality" standard to showing of "actual prejudice").

Therefore, as the record conclusively establishes that Defendant is not entitled to relief on ground six of his petition, the Court dismisses it without an evidentiary hearing. 28 U.S.C. § 2255(b).

CONCLUSION

Defendant's failure to assert the arguments presented in grounds five and six of his petition bars him from raising them on collateral review. Defendant also fails to establish that, even if the impeachment evidence he claims was suppressed had been provided to him, the result of his trial—where he faced significant, direct evidence of guilt—would have been any different. These conclusions are conclusively established by the record, and therefore, an evidentiary hearing is unnecessary. The petition is dismissed.

//

Accordingly, **IT IS HEREBY ORDERED**:

1. Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence By a Person in Federal Custody, **ECF No. 687**, is **DISMISSED**.

2. The evidentiary hearing set for November 19, 2019 is **STRICKEN**.

3. All pending motions are **DENIED AS MOOT**.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order, **ENTER JUDGMENT**, provide copies to *pro se* Petitioner, counsel for the Government, and the United States Marshals Service, and **CLOSE** the file. The Court certifies that Defendant has failed to make a substantial showing of the deprivation of a constitutional right because reasonable jurists could not debate whether the petition should be resolved in a different manner. *See* 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000). A certificate of appealability is therefore **DENIED**.

DATED this 12th day of November 2019.

SALVADOR MENDOZA, JR.
United States District Judge

SUPREME COURT OF THE UNITED STATES

JASON CHARLES YOUKER, DEFENDANT	PETITION FOR WRIT OF CERTIORI
	TO CASE NO. 20-36019
V.	
UNITED STATES OF AMERICA, PLAINTIFF.	

Comes now the above-named defendant pro se and moves this Court for a Petition for a writ of certiori to the united states Court of appeals for the Ninth circuit, case no 20-36019 pursuant to the following:

1. DO POLICE VIOLATED DUE PROCESS WITHIN THE FIFTH AMENDMENT WHEN THEY PROVIDE AND AUTHORIZE INFORMANTS TO SELL NARCOTICS TO THE COMMUNITY WITHOUT ANY INTENT OF THEIR RECOVERY?

2. WHEN A EVIDENTIARY HEARING IS SCHEDULED FOR POLICE UNLAWFUL CONDUCT, SHOULD A HEARING BE CONDUCTED OR DENIED BY A TRIAL JUDGE WHO RECUSED HIMSELF FOR BIAS?

3. WOULD JURORS OF REASON HAVE THEIR CONSCIOUS SHOCKED BY OFFICERS PROVIDING HEROIN AND METHAMPHETAMINE TO THEIR INFORMANTS WHERE THOSE NARCOTICS WERE SOLD TO A PREGNANT MOTHER AND JUVENILES, AND USED TO RAPE A WOMAN BY THEIR OWN INFORMANT?

Do to the testimony by officers in this case, these facts have never been disputed, or the merits decided upon by any Court, due to a "jurors of reason" procedural bar, I would ask the court for help with presenting these matters before the court as I am not a member of the Bar, and to construe this motion pursuant to haines v. kerner.

DATED: 03-29-2021

JASON C. YOUKER #11996-085
FCI ENGLEWOOD
9595 WEST QUINCY AVE
LITTLETON, CO. 80123