TRULINCS 48591066 - ZINNER, EDWARD - Unit: LOR-C-A

FROM: 48591066
TO:
SUBJECT: APPENDIX
DATE: 09/05/2021 11:01:02 AM

APPENDIX-1

LIST OF APPENDICES

APPENDICE A ---------- Decision of Third Circuit No. 20-2961 April 22, 2021

APPENDICE B ----------Decision of the District Court, December 16, 2020

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BLD-160

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-2961

UNITED STATES OF AMERICA

v.

EDWARD M. ZINNER,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Criminal Action No. 95-cr-00048-001)
District Judge: Honorable John R. Padova

Submitted on the Government's Motion for Summary Affirmance
Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6

April 22, 2021
Before: AMBRO, SHWARTZ, and PORTER, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted the Government's motion for summary affirmance pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on April 22, 2021. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered September 16, 2020, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

Appendice A

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: April 27, 2021

Certified as the mandate and issued in lieu of a formal mandate on 05/19/21

Teste: Patricia A Dodszuweit

Clerk, U.S. Court of Appeals for the Third Circuit

UNITED STATES OF AMERICA v. EDWARD M. ZINNER
UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA
2020 U.S. Dist. LEXIS 169108
CRIMINAL ACTION NO. 95-48
September 16, 2020, Decided
September 16, 2020, Filed

Editorial Information: Subsequent History

Affirmed by, Motion denied by, As moot United States v. Zinner, 2021 U.S. App. LEXIS 12450, 2021 WL 1626518 (3d Cir. Pa., Apr. 27, 2021)

Editorial Information: Prior History

United States v. Zinner, 1996 U.S. Dist. LEXIS 16053 (E.D. Pa., Oct. 24, 1996)

Counsel {2020 U.S. Dist. LEXIS 1}For RESOURCE BANK, Interested Party: JOHN A. WETZEL, LEAD ATTORNEY, WETZEL GAGLIARDI & FETTER LLC, WEST CHESTER, PA; JONATHAN L. HAUSER, LEAD ATTORNEY, CHRISTIAN, BARTON, EPPS, ETAL, VIRGINIA BEACH, VA.

For EDWIN B. LINDSLEY, JR., Interested Party: JOHN ROGERS CARROLL, LEAD ATTORNEY, CARROLL & CARROLL, PHILA, PA.

CINDY B. ZINNER, Interested Party, Pro se, JOHNSTOWN, PA.

For USA, Plaintiff: JUSTIN T. ASHENFELTER, LEAD ATTORNEY, U.S. ATTORNEY'S OFFICE, EDPA, PHILADELPHIA, PA; PAMELA FOA, LEAD ATTORNEY, ASSISTANT U.S. ATTORNEY, PHILA, PA; SETH WEBER, LEAD ATTORNEY, QUAKERTOWN, PA.

Judges: John R. Padova, United States District Judge.

Opinion

Opinion by: John R. Padova

Opinion

MEMORANDUM

Padova, J.

Pro se Movant Edward M. Zinner, a federal prisoner who pled guilty to racketeering offenses in this Court, has filed a Motion for Writ of Error *Coram Nobis*.1 (ECF No. 268.) He has also filed a Motion for Recusal (ECF No. 269.) For the reasons that follow, both Motions are denied.

I. BACKGROUND

Following his plea and the imposition of sentence, Zinner filed a Motion pursuant to 28 U.S.C. § 2255 on May 28, 1996. (ECF No. 113.) In that Motion, he asserted claims of ineffective assistance of trial counsel and prosecutorial misconduct.**{2020 U.S. Dist. LEXIS 2}** These claims were denied on the merits. *See United States v. Zinner*, Civ. A. No. 96-3959, Crim. A. No. 95-48-01, 1996 U.S. Dist.

Appendice - A

LEXIS 16053, 1996 WL 628585, at *7 (E.D. Pa. Oct. 25, 1996). That decision was affirmed on appeal to the United States Court of Appeals for the Third Circuit on August 13, 1997. (*See* ECF No. 186.)

While the appeal was pending, **Zinner** filed a Motion pursuant to Rule 60(b) in which he (1) repeated some claims raised in his § 2255 Motion, allegedly based on his receiving new evidence, and (2) raised two new claims. In the first new claim, he argued that his guilty plea was not valid because it was coerced by the prosecutorial threats to indict members of his family if he did not plead guilty. In the second, he asserted that newly discovered evidence revealed a secret and corrupt agreement between his attorney and prosecutors that his attorney would not be indicted for fraud if he convinced **Zinner** to plead guilty in this case. In 1998, after a full evidentiary hearing, the Rule 60(b) motion was denied because **Zinner** failed to prove any secret and corrupt deal. *United States v. **Zinner***, Crim. A. No. 95-48, 1998 WL 57522, at *1 (E.D. Pa. Feb. 9, 1998). Thereafter the Third Circuit denied **Zinner** a certificate of appealability. (*See* ECF No. 237.) **Zinner** filed another Rule 60(b) Motion on September 1, 1999. (ECF No. 252.) That Motion was denied in an Order entered on October 21, 1999.**{2020 U.S. Dist. LEXIS 3}** (ECF No. 257.)

Some twenty years later, on February 27, 2019, **Zinner** filed another Motion, this time pursuant to Rule 60(d). (ECF No. 259.) **Zinner** again sought to set aside the judgments denying relief pursuant to both § 2255 and 60(b), and to dismiss the 1995 indictment against him with prejudice, based on the alleged secret deal between his counsel and prosecutors. (*See id.* at 104-05.)2 Specifically, he claimed that prosecutors misled the Court in both the § 2255 and Rule 60(b) proceedings based on alleged new evidence that the Government had drafted but not filed a motion to disqualify his co-Defendant's counsel due to that counsel's representation of Petitioner in earlier proceedings. The Court concluded that, to the extent that the Motion was not a second or successive § 2255 habeas petition, over which there would be no jurisdiction, the Motion failed on its merits because it, like his earlier Motion, was "based primarily on conjecture, speculation, and reinterpretation of old evidence in an effort to convince the Court that his explanation is the only one that makes sense," and **Zinner** had not put forth the "'clear, unequivocal and convincing evidence' of a fraud on the court that is necessary to obtain the 'extraordinarily rare relief**{2020 U.S. Dist. LEXIS 4}** that [Rule 60(d)] provides.'" (ECF No. 264 at 2 n.1 (citations omitted).)

Zinner's current Motion is styled as one seeking a writ of error *coram nobis*. (ECF No. 268.) He asserts that he is entitled to relief based on "'errors of fact' related to prosecutors arranging conflicted defense counsel to represent defendants in this criminal trial, intentionally compromising the defendant's legal and financial interests for the benefit of the government." (*Id.* at 2.) He adds that the "evidence submitted with the 1999 & 2019 Rule 60 motions is irrefutable" and the Court "authored factually incorrect and intentionally deceptive 'opinions' . . . where KNOWN perjury is found as fact." (*Id.* at 3.) He again alleges the Government prepared but never filed a motion seeking the disqualification of a co-defendant's attorney. (*See id.* at 12.) He asserts that he has suffered continuing consequences of his conviction in the form of tax liens, which he contends he has successfully litigated and had removed; dismissal as a named plaintiff in a civil stock fraud case seeking money damages; eviction from his apartment; denial of voting rights, Second Amendment rights, and professional licensure; and the seizure of a tax refund. (*Id.* at 12-13.) The balance of the pleading rehashes**{2020 U.S. Dist. LEXIS 5}** arguments and factual assertions raised in Zinner's prior Motions that were previously rejected by the Court involving his right to conflict-free counsel and the alleged conspiracy between his counsel, counsel for co-defendants, and prosecutors.

II. WRIT OF ERROR *CORAM NOBIS* - STANDARD

The All Writs Act, 28 U.S.C. § 1651, is a residual source of authority to issue writs in exceptional

circumstances. *Pa. Bureau of Corr. v. U.S. Marshals Serv.*, 474 U.S. 34, 43, 106 S. Ct. 355, 88 L. Ed. 2d 189 (1985). A petition for error *coram nobis* "is used to attack allegedly invalid convictions which have continuing consequences, when the petitioner has served his sentence and is no longer 'in custody' for purposes of 28 U.S.C. § 2255." *United States v. Stoneman*, 870 F.2d 102, 105-06 (3d Cir. 1989); *see United States v. DeJesus*, Crim. No. 96-434, 2000 U.S. Dist. LEXIS 1780, 2000 WL 217520, at *2 (E.D. Pa. Feb. 11, 2000) (noting that "the writ of *coram nobis* is available only where the defendant has completely served his sentence"). "Use of the writ is appropriate to correct errors for which there was no remedy available at the time of trial and where 'sound reasons' exist for failing to seek relief earlier." *Stoneman*, 870 F.2d at 106 (quoting *United States v. Morgan*, 346 U.S. 502, 512, 74 S. Ct. 247, 98 L. Ed. 248 (1954)). "Only where there are errors of fact of the most fundamental kind, that is, such as to render the proceeding itself irregular and invalid, can redress be had." *United States v. Cariola*, 323 F.2d 180, 184 (3d Cir. 1963) (quotation omitted). "The error must go to the jurisdiction of the trial court, thus rendering the trial itself invalid." *Stoneman*, 870 F.2d at 106. As the**{2020 U.S. Dist. LEXIS 6}** *Stoneman* Court stated, "*Coram nobis* is an extraordinary remedy, and a court's jurisdiction to grant relief is of limited scope." *Id.* (citing *Cariola*, 323 F.2d at 184). "'The interest in finality of judgments dictates that the standard for a successful collateral attack on a conviction be more stringent than [either] the standard applicable on a direct appeal,'" or the standard on a petitioner seeking habeas relief under § 2255. *Id.* (quoting *United States v. Gross*, 614 F.2d 365, 368 (3d Cir. 1980)) (citing *United States v. Osser*, 864 F.2d 1056, 1060-61 (3d Cir. 1988); and *United States v. Keogh*, 391 F.2d 138, 148 (2d Cir. 1968)).

Stated succinctly, *coram nobis* relief has five essential prerequisites. A petitioner must show that he or she "(1) is no longer in custody; (2) suffers continuing consequences from the purportedly invalid conviction; (3) provides sound reasons for failing to seek relief earlier; (4) had no available remedy at the time of trial; and (5) asserted error(s) of a fundamental kind." *Ragbir v. United States*, 950 F.3d 54, 62 (3d Cir. 2020) (citations omitted); *see also United States v. Babalola*, 248 F. App'x 409, 412 (3d Cir. 2007); *Mendoza v. United States*, 690 F.3d 157, 159 (3d Cir. 2012); *Stoneman*, 870 F.2d at 105-06.

III. WRIT OF ERROR *CORAM NOBIS* - ANALYSIS

Applying the multipart test for a writ of error *coram nobis* pursuant to the All Writs Act, **Zinner** clearly meets the first prong since he is no longer in custody for the conviction he sustained in this Court. However, **Zinner** has failed to show at least two other prerequisites to relief. He has already unsuccessfully**{2020 U.S. Dist. LEXIS 7}** litigated the issue of whether there was a fundamental error and he has fallen far short of making the necessary showing of exceptional circumstances warranting *coram nobis* relief.

Zinner again asserts that a secret and corrupt agreement between defense counsel and prosecutors led to his conviction. As noted, the Court rejected this claim following a full evidentiary hearing in 1998 during which **Zinner** failed to prove any secret and corrupt deal. His only "new" evidence appears to involve a motion to disqualify co-defendant Mark Waldron, Jr.'s attorney, Sidney Friedler, that the Government allegedly prepared but never filed. (*See* ECF No. 268-2 at 1-30.) The document was, however, attached to Zinner's prior Rule 60(d) Motion (*see* ECF No. 259 at 148-163), and evidence, including testimony, about Zinner's relationship with Friedler was introduced during the evidentiary hearing on his Rule 60(b) Motion, *see* ***Zinner***, 1998 WL 57522, at *9, after which the Court failed to credit Zinner's allegations. *Id.* at *13. In any event, the allegation about an unfiled disqualification motion involving a co-defendant's attorney is not an error that goes to the Court's jurisdiction that would render Zinner's conviction invalid. *See Stoneman*, 870 F.2d at 106.

Finally, while **Zinner** alleges**{2020 U.S. Dist. LEXIS 8}** specific continuing consequences of his

conviction, none of them fall within the ambit of continuing consequences sufficient to obtain the requested writ. **Zinner** concedes that the tax liens he cites have been successfully litigated and removed; thus they cannot qualify. His conclusory allegations that he was dismissal as a named plaintiff in a civil stock fraud case seeking money damages and cannot get professional licensure are wholly unsupported. Moreover, financial consequences - such as tax liens, stock losses, eviction from one's apartment, inability to obtain chosen employment, and lost tax refunds - do not appear to qualify as the type of serious continuing consequences sufficient to attain the extraordinary grant of the writ. *See, e.g., Rodriguez v. United States*, 730 F. App'x 39, 45 (2d Cir. 2018) (remanding for determination whether guilty plea, allegedly resulting from ineffective assistance of counsel, could be the basis for denaturalization proceedings and thus satisfy continuing consequence prong); *Williams v. United States*, 858 F.3d 708, 715 (1st Cir. 2017) (prong was met where inability to obtain lawful permanent resident status because the underlying facts of conviction involving a false claim of United States citizenship, and being subject to deportation at any moment, qualified as continuing**{2020 U.S. Dist. LEXIS 9}** consequence); *George v. Black*, 732 F.2d 108, 110 (8th Cir. 1984) (noting that the possibility of confinement pursuant to civil commitment proceedings after the expiration of a criminal sentence is a collateral consequence). Finally, Zinner's claim concerning his voting rights and Second Amendment rights are also insufficient grounds to grant the extraordinary remedy of a writ of *coram nobis* because **Zinner** has suffered other convictions that also affect these rights.

IV. MOTION FOR RECUSAL

Zinner has also filed a recusal motion alleging bias. The gist of the allegation is that the Court rejected his evidence of counsels' conflicts and determined not to grant **Zinner** the relief he sought in his prior Motions. (*See* ECF No. 269 at 2, 4-6.)

The threshold issue is whether, under 28 U.S.C. § 455, recusal is required due to bias. Section 455(b)(1) provides that a judge shall "disqualify himself . . . [w]here he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding . . . ." 28 U.S.C. § 455(b)(1). The United States Supreme Court defines "bias and prejudice" as a "favorable or unfavorable disposition or opinion that is somehow *wrongful* or *inappropriate*, either because it is undeserved, or because it rests upon knowledge that the subject**{2020 U.S. Dist. LEXIS 10}** ought not to possess, . . . or because it is excessive in degree . . . ." *Liteky v. United States*, 510 U.S. 540, 550, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994).

The Supreme Court held that while an "extrajudicial source" is the "only *common* basis" for establishing "disqualifying bias or prejudice," it is not the exclusive basis to establish such bias or prejudice. *Id.* at 551. "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality recusal motion" because "they cannot possibly show reliance upon an extrajudicial source[,] and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved." *Id.* at 555. "[O]pinions formed by the judge on the basis of facts . . . 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." *Id.* Similarly, judicial remarks cannot ordinarily be the basis for bias and prejudice but may be "if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." *Id.* In *Liteky**{2020 U.S. Dist. LEXIS 11}*, the Court ultimately held that "[a]ll of the[] grounds [that petitioner set forth] are inadequate" because "[t]hey consist of judicial rulings, routine trial administration efforts, and ordinary admonishments . . . to counsel and to witnesses." *Id.* at 1158.

The Third Circuit has likewise stated that "'judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.'" *Robinson v. Horizon Blue Cross Blue Shield of N.J.*, 674 F. App'x 174, 179 (3d. Cir. 2017) (quoting *Liteky*, 510 U.S. at 555); *see also United States v. Wecht*, 484 F.3d 194, 213-21 (3d. Cir. 2007) (denying a writ of mandamus ordering the judge's disqualification when evidence of bias based on remarks, practices, and rulings). Indeed, "'a party's displeasure with legal rulings does not form an adequate basis for recusal'" because "'[i]n the event that the court's [] rulings may be in error, they are subject to review on appeal.'" *Rashid v. Ortiz*, Crim. A. No.In re TMI Litig. 08-493, Civ. A. No. 15-274, 2016 U.S. Dist. LEXIS 181234, 2016 WL 7626712, at *3 (E.D. Pa. June 20, 2016) (alterations in original) (first quoting *Securacomm Consulting, Inc. v. Securacom Inc.*, 224 F.3d 273, 278 (3d Cir. 2000); then quoting In re TMI Litig., 193 F.3d 613, 728-29 (3d Cir. 1999)).

Zinner's recusal argument fails to demonstrate that the Court's prior Orders have "such a high degree of favoritism or antagonism as to make fair judgement impossible." *Liteky*, 510 U.S. at 555. There is also no basis to hold that prior rulings were based on an "extrajudicial source" or reached the high "degree of favoritism or antagonism [that is] required . .**{2020 U.S. Dist. LEXIS 12}** . when no extrajudicial source is involved." *Id.* at 555 (noting the degree of favoritism or antagonism is reached in only the rarest circumstances). Merely alleging that a court has reached adverse decisions without demonstrating the required "degree of favoritism or antagonism" is insufficient for recusal. To the extent **Zinner** disagrees with the Court's rulings, an appeal, not recusal, is not the appropriate avenue for a remedy. *See Rashid*, 2016 U.S. Dist. LEXIS 181234, 2016 WL 7626721, at *3.

Accordingly, to the extent that **Zinner** moves for recusal under 28 U.S.C. § 144, the Motion is denied on the merits, but it is also denied because of procedural deficiencies. Specifically, **Zinner** failed to provide a certificate of good faith signed by "counsel of record." 28 U.S.C. § 144; *see also Heimbecker v. 555 Assocs.*, Civ. A. No. 01-6140, 2003 U.S. Dist. LEXIS 6636, 2003 WL 21652182, at *4 (E.D. Pa. Mar. 26, 2003) (stating that "the absence of a certificate of counsel is a sufficient basis upon which a motion for recusal pursuant to 28 U.S.C. § 144 may be denied" (citation omitted)). Where, as here, a movant is proceeding *pro se*, any member of the bar may sign the certificate. *See, e.g., United States v. Rankin*, 1 F. Supp. 2d 445, 450 (E.D. Pa. 1998) (citation omitted). However, **Zinner** has submitted no signed certificate.

V. CONCLUSION

For the reasons stated above, Zinner's Motion for Writ of Error Coram Nobis and Motion for Recusal are denied. An appropriate Order follows.

BY THE COURT:**{2020 U.S. Dist. LEXIS 13}**

/s/ John R. Padova, J.

John R. Padova, J.

ORDER

AND NOW, this 16th day of September, 2020, upon consideration of Defendant Edward M. Zinner's Motion for Writ of Error Coram Nobis (ECF No. 268) and Motion for Removal/Recusal (ECF No. 269), and for the reasons set forth in the accompanying Memorandum, **IT IS HEREBY ORDERED** as follows:

1. The Motion for Writ of Error Coram Nobis is **DENIED**.
2. The Motion for Removal/Recusal is **DENIED**.

BY THE COURT:

/s/ John R. Padova, J.

John R. Padova, J.

Footnotes

1

Zinner has served the sentence imposed by this Court. He is in federal custody due to a subsequent conviction in the United States District Court for the Eastern District of Virginia involving a violation of 18 U.S.C. § 1957. *See United States v.* ***Zinner***, Crim No. 17-3 (E.D. Va.). Following the entry of a guilty plea, he was sentenced on April 12, 2018 to a term of incarceration of 120 months, followed by supervised release of 3 years.

2

The Court adopts the pagination supplied by the CM/ECF docketing system.

1. Secret Condition of the Plea Agreement.

Defendant claims there was a secret and illegal deal between himself and the government to the effect that the government would not indict his wife, mother, or brother if he pleaded guilty. He evidently wishes to argue that the agreement was illegal under *United States v. Brady*, 397 U.S. 742, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970), on the ground that the government allegedly threatened to indict his family members if he did not plead guilty. The following evidence was presented on the issue.

Prior to his hearing, Defendant called his former attorney, Albert Mezzaroba, from prison. His notes of the tape of the telephone conversation state the following: "Question proposed from **Zinner**: Do you recall the prosecutor agreeing not to indict my mother if I would plead guilty? Mezzaroba Response; YES, why their [sic] not going after your Mother, are they?" (Deft.'s Mem. in Supp. of Sanctions, Ex. 16.)

At the hearing, Defendant asked Mezzaroba about this conversation, and Mezzaroba elaborated as follows:

> There was an agreement by the government, although not made part of the plea, there was an agreement that after Ed [**Zinner**] pled guilty that the case basically stopped there.
>
> He was basically the boss behind everything, and they wouldn't indict his wife, his mother and his brother, who were also minor players in the company.(Tr. of 11/12/97 at 79.) Later in Mezzaroba's testimony, Defendant raised the issue again:
>
> Q Was the agreement [not to indict Defendant's mother] inducement is . . . what I'm trying to say?
>
> A The way I recall it was that there were many aspects of the plea and the negotiation to get to that plea. One of the benefits that was given to you by pleading was the fact that the investigation stopped with you. Once they had you, they had no interest in your mom, your brother or your wife.
>
> . . .
>
> Had you gone to trial, I still think they may have or may not have indicted.
>
> Q So you -- there in fact was an agreement not to indict my mother if I pled guilty.
>
> A Sure.(*Id.* at 91). Still later in his testimony, Mezzaroba explained that the government's agreement not to indict Defendant's family members was "a byproduct" of the plea negotiations. (*Id.* at 96.) He further stated:
>
> It wasn't put to you that either if you don't plead guilty we're going to indict your mother, but part of the negotiation that you and I had discussed and it was discussed with the Government, that it ends with you. . . . . And that they . . .wouldn't be looking for the minor players later on down the road. . . . Well, it was never discussed whether it would appear or not in the plea agreement, . . .(*Id.* at 129.)

Assistant United States Attorney Pamela Foa testified that an agreement not to indict Defendant's family members was not a condition of his guilty plea. When Defendant asked her if she accepted his statement that the government had agreed, as an inducement to obtain his guilty plea, that it would not seek indictments against his mother or wife, she replied, "No, I do not. I certainly agree that the question was raised whether or not down the road there were going to be further indictments." (Tr. of 11/12/97 at 156.)

Appendix C

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At the hearing, the Court accepted Defendant's representation that "the Government wasn't going to indict, or that you believed that if you pleaded guilty the Government would not indict your mother or your wife, and that you certainly gave that favorable consideration in determining whether or not to enter a guilty plea." (*Id.* at 96.) But there was no convincing evidence that the prosecutors made threats or explicit promises not to indict Defendant's family members. The evidence showed they let it be known that their primary interest was in Defendant and that they did not intend to pursue minor players if he pled guilty; and they did not pursue minor players.

When asked what was newly discovered about this agreement or understanding, which he obviously know about at the time of his plea, Defendant answered that he had only recently discovered that it was illegal. Such a discovery would not qualify as newly discovered evidence under Rule 30. It is not evidence at all. In any case, Defendant's evidence does not show that what occurred was illegal.

Defendant argues that his plea was induced by of threats of indictment of his family members and was therefore involuntary under *Brady*, which he quotes. In *Brady*, the Supreme Court stated:

> [A] plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes). 397 U.S. 742 at 755, 90 S. Ct. 1463 at 1472 (quotations, citation, and footnote omitted). In this case, however, Defendant has presented no evidence bringing this case within the rule of *Brady*, no evidence of a secret or improper agreement not to indict Defendant's family members based on "threats (or promises to discontinue improper harassment)." Nor was there anything improper in the Government's letting Defendant know that it was not interested in pursuing minor players in the fraud once the kingpin pleaded guilty.

There is an important line to be drawn between an implicit understanding, as evidently occurred in this case, and a bargain based on a threat. While the word "agreement" can be applied to either, Mezzaroba's testimony makes clear that there was no threat when he states, "It wasn't put to you that . . . if you don't plead guilty we're gong to indict your mother, but part of the negotiation that you and I had discussed and it was discussed with the Government, that it ends with you. . . . And that they . . . wouldn't be looking for the minor players later on down the road." (Tr. of 11/12/97 at 129.) On the basis of the evidence presented in this case, the Court finds the government did not threaten Defendant or his family or mislead him. His plea was therefore not made involuntary by an understanding concerning his family that was not recorded in the plea agreement.

2. Secret "Deal" between Defense Counsel and Prosecutors

Defendant introduced at his hearing affidavits and other written submissions, transcripts of tape recorded conversations, and testimony to support his allegation of a secret deal between government prosecutors and his attorney. Defendant not only tried to prove that there was a secret deal between defense counsel and the prosecutors, he offered a reinterpretation of much evidence that was not newly discovered in light of this alleged deal. He wanted to show that all of his attorney's conduct was circumstantial evidence of the deal and was intended to implement it. For example, Defendant argued that Mezzaroba's advice that he not object to many of the facts in the Presentence Investigation Report was part of the deal. However, Mezzaroba testified that he thought such objection would compromise Defendant's reduction for acceptance of responsibility, and this Court found in its Memorandum Opinion on Defendant's Section 2255 Motion that Mezzaroba's assistance at sentencing was not ineffective. Unless newly discovered evidence established that there was, in

fact, a corrupt deal, there is no reason to revisit issues already decided. The Court will now review what Defendant claims is newly discovered evidence of the alleged deal.

a. Affidavit of William Turpin

Defendant included as an exhibit to his Rule 60(b) Motion a single page of what purported to be an affidavit from government agent William Turpin. The document states in part:

> 20. Subjects **ZINNER** and WALDRON and through the American Trust, NICE, the American Association and Equity Development Corporation are aware that they are involved in an operation to defraud employee welfare benefit plans participants of money through the use of the businesses and trust identified above.
>
> 21. Cooperating witnesses report that **ZINNER** intends to and will shortly close the American Plan. They report that **Zinner** has caused to be prepared the cancellation letter to policyholders to notify them of the closing of the American Plan within 30 days. In addition, he has caused envelopes for these notices to be addressed on January 7 and 8, 1995.
>
> 22. The investigation has disclosed, as well, that within the last six months the Subjects have transferred Trust funds for personal expenses, including over $ 50,000 to pay attorneys representing the Subjects in this criminal investigation.(Deft.'s Mot. at Ex. 60-C.) 4 Accepting this page as part of Turpin's affidavit, it is evidence only that the government was aware that Defendant and Waldron had used some of the trust fund money to pay their attorneys, not that their attorneys had done anything illegal for which they might be indicted.

b. Letter of Sidney Friedler

On April 18, 1997, attorney Sidney Friedler, who represented co-defendant Mark Waldron, Jr. in this case, wrote a letter to Defendant, the entire body of which reads as follows:

> Reference is made to our conversation this date, wherein you made inquiry as to the conversation with Al Mezzaroba regarding legal fees paid to him out of the trust. Mr. Mezzaroba indicated to me that various discussions were held between him and the U.S. Attorney regarding these fees. He relayed to me in conversation that there was an issue raised with him by the U.S. Attorney regarding the payment of fees directly from the trust. He relayed this information to me prior to your sentencing.(Deft.'s Mot. at Ex. 60-D.) This letter and the conversation to which it refers evidently came about after Defendant found Turpin's affidavit in Mezzaroba's files. Defendant then wanted to get more information about possible negotiations between Mezzaroba and the government over the payment of Mezzaroba's legal fees from the trust. The letter goes to show that, before Defendant's sentencing, the government and Mezzaroba were in communication about the payment of his fees directly from the trust fund.

c. Tapes of Defendant's Conversations with Friedler 5

Defendant requested, and the Court Ordered, the preservation of tapes of telephone conversations Defendant had from prison with two attorneys. Those from March, 1997, with Albert Mezzaroba, were not transcribed, but Defendant listened to them, took notes, and his notes were admitted into evidence. Those from April 8, 1997, with Sidney Friedler, were transcribed, and the transcripts were admitted into evidence.

Defendant indicated that some of the most important evidence he had of a secret deal came from three telephone conversations held on April 8, 1997, between himself and Sidney Friedler. The three conversations were really one conversation which was interrupted because Defendant could use the prison telephone for only a short period at a time. The following passages from the transcript contain

representative examples of Friedler's statements regarding Defendant's allegations of a deal between the government and Mezzaroba:

> MR. **ZINNER**: Well, Mr. Waldron, Senior, has told my wife that you had a conversation with him that Al [Mezzaroba] made a deal with my prosecutor to not be charged for taking fees out of the trust, and part of that deal included him withdrawing from the race for City Council in Philadelphia. Is that true?
>
> MR. FRIEDLER: No.
>
> . . .
>
> The only question she ever raised, [prosecutor] Pam Foa, was that there were fees paid out of the trust to defend the trust.
>
> . . .
>
> The only thing I remember is that Pam or Seth Weber, when they reviewed all the accounting records; correct?
>
> . . .
>
> Raised the issue that legal fees had in fact been paid out of the trust.
>
> . . .
>
> [Al] never told me he was threatened with indictment. I'm telling you, I was never told he was threatened with an indictment.
>
> . . .
>
> The only question was would that money have to be restored back to – by Al to the trust.
>
> MR. **ZINNER**: . . . I would appreciate it if you could send me a letter . . . that you are aware that there was at least discussion between you and Al with respect to those fees and the prosecutors.(Tr. of 4/8/96 at 2, 3, 7, 9, 11, 26.) Then, while still on the telephone with Defendant, Friedler proceeded to dictate the letter, which is reproduced in section (b), *supra*. Both the letter and the transcript show that Friedler was aware that prosecutors had raised with Mezzaroba the issue of payment of legal fees from the trust fund and the tapes show that there was a question whether Mezzaroba would have to repay the fees. They do not show or suggest that there was a deal between Mezzaroba and Foa whereby Foa agreed not to indict Mezzaroba in exchange for Mezzaroba's delivering Defendant's guilty plea. 6

Another section of Friedler's tape relates to a conversation he had with Mark Waldron, Sr., about which Waldron testified at the hearing. The portions of the transcript relating to that conversation will be discussed below, along with Waldron's testimony.

d. Testimony of Mark Waldron, Sr.

Mark Waldron, Sr., the father of co-defendant Mark Waldron, Jr., signed an affidavit and then testified at the hearing as to conversations that occurred before his son pleaded guilty. Mezzaroba had agreed to drive Friedler and Waldron, Sr. to the naval station. Waldron testified that Mezzaroba spent the whole journey of about fifteen or twenty minutes trying to convince him that his son should plead guilty. (*Id.* at 11.) He stated that Mezzaroba "indicated that at this time the prosecutors had dropped some charges and that Mark might get a lesser penalty if he pleaded guilty right now, that was the sort of logic he was giving to me. And I in turn couldn't think of any reason why my son should plead guilty to something that he hadn't done." 7 (Tr. of 12/30/97 at 13.) He went on to state:

When we arrived at the place where Mr. Friedler was staying, he and Mr. Mezzaroba spoke together for a half an hour or so and I was waiting in the other room. And when Mr. Mezzaroba left Mr. Friedler came up to me and said to me, he said -- I'll answer as exactly as I can -- "he really worked on you, didn't he?" I said, yeah, I don't understand that, he's supposed to be one of our guys. He said, well, the prosecutors found out that he had take $ 80,000 from the trust and that was illegal, that's what I think he said, that was illegal or that was not legal. And he said now he's got to do everything they tell him or he's going to be in big-time trouble. And then he said they've really got him by the -- well, where the hair is short, that's the way he said it. And that was the first time that I had heard or knew of an arrangement.(*Id.*)

Friedler's account of what he told Waldron in his telephone conversation with **Zinner** about Mezzaroba's payment from trust funds differs from Waldron's account. He stated:

Waldo's father was concerned that his son would take a plea and go to jail.

I said to him, "Look. You know, it looks like if we get this thing done, he will not go to jail at this point, . . ." He had manifested some concern about whether he should plead guilty, and I have some recollection of Al saying to him he should plead guilty. He should do this, and the old man was all pissed off.

. . .

Al mentioned to me that they had questioned him or something in regard to legal fees, and he was talking, and I said [to Waldron] "Gee, he's all concerned about that," but I never said he was going to be indicted. I never said that he was dropping out of the race, because I don't think at that time I knew.

MR. **ZINNER**: What he said was that you told him that Al had made a deal with the prosecutors to drop out of the race in return for not being indicted.

. . .

MR. FRIEDLER: No. I'm telling you, I don't remember that.(Tr. of 4/8/97 at 33-34.)

There may be an inconsistency between what Waldron testified that Friedler told him about Mezzaroba and Friedler's statements on tape as to what he knew about Mezzaroba. While the Court sees no reason to find either testimony less than credible, it must give greater credence to Friedler's own statements regarding his knowledge. There is no convincing evidence that Friedler had knowledge of a secret deal between Mezzaroba and the prosecutors, and his statements on tape, combined with the other evidence, compels the Court to reach the conclusion that no secret deal has been proved.

e. Testimony of Albert Mezzaroba

Defendant questioned Mezzaroba extensively about the payment of his legal fees from the trust fund and other matters, but failed to adduce any evidence that a secret deal existed between the prosecutors and Mezzaroba. An example of their exchange appears below:

Q Mr. Mezzaroba, did you ever have any discussions with Mr. Weber or Ms. Foa with respect to the legal fees being paid to you from the trust fund as to whether or not you would be allowed to keep them?

A No, never had a discussion. Like I said the last time I was here, there were discussions where the prosecutors let us know that they were aware that legal fees came out of the trust fund, which was no big secret, they were checks. But there was never discussions that they were going to

come after at least myself for the attorneys' fees at any time. [p. 36-37.]

. . .

My understanding of this fee, as well as any other fee I take in a criminal case, it's possibly subject to forfeiture at the very worst-case scenario. And that was the question of the illegality and the possibility that I was under a criminal investigation.

. . .

Q . . . When you learned on January 13th, '95 that the prosecutors were interested in the fees did you have any discussions with any representative of the government about any possible criminal liability to you?

A No.

Q. But you did have discussions with respect to criminal liability to me?

A It wasn't -- from what I recall in discussing the entire case, not just the attorneys' fees, the attorneys' fees were a very small portion of the case. What the Government was alleging, that you had -- one of the things you were doing with the trust money was paying your own bills, including attorneys' fees.(Tr. of 12/30/97 at 36-37, 39.)

Mezzaroba stated that he and Friedler were doing both civil work for the trust and criminal work for the defendants, and that it was proper that they get some of their fees from the trust. He further testified that the government had never asked for any of the fees back and that he had never returned any.

f. Testimony of Pamela Foa

Assistant United States Attorney Seth Weber proffered the testimony of Assistant United States Attorney Pamela Foa that "she did not at any time make any secret deals or agreements with Mr. Mezzaroba, nor did she ever discuss with Mr. Mezzaroba withdrawing from any political race with which he was involved or that would be any condition of any guilty plea." He further proffered that "there were no other agreements other than what is in writing and certainly no threats of prosecution, suggestions of any prosecution or investigation of Mr. Mezzaroba by Ms. Foa or myself." (Tr. of 11/12/97 at 154.) Pamela Foa accepted the proffer as her testimony, but Defendant insisted that she take the witness stand and she testified to what was represented in the proffer. (*Id.* at 155-56.) When Foa testified, she was asked neither whether Mezzaroba had done anything illegal in accepting fees from the trust fund, nor why, if he had done something illegal, the government had not pursued the matter. But she denied emphatically that there had ever been any secret deal with him.

g. Summary

The amount of newly discovered evidence of a secret deal between prosecutors and Mezzaroba is small indeed. Turpin's affidavit shows that the government was aware that Defendant had paid some of Mezzaroba's legal fees from one of the trust fund plans. On the basis of that affidavit, Defendant extracted evidence from Sidney Friedler and Mark Waldron, Sr. that the government had raised the question of the fees with Mezzaroba. Waldron was under the impression that Friedler had told him Mezzaroba was under the control of the prosecutors. Friedler had a much less sinister account of his conversation with Waldron. He remembered that he said Mezzaroba was concerned about his conversation with the prosecutors over legal fees. Both Friedler and Mezzaroba stated that the worst that could have happened was that Mezzaroba would have had to return the fees, but Friedler testified that he had heard nothing about a possibility of indictment.

Defendant offers a few other bits of newly discovered evidence: for example, two versions of the government's sentencing memorandum in Mezzaroba's files, one which accepted for a reduction for acceptance of responsibility and a later one which challenged it. Defendant asked Pamela Foa if, after the first sentencing memorandum was submitted to the Court, she had any discussions with Mezzaroba about submitting a second memorandum. She stated that she did not recall, but that her practice would have been to call him before filing the second one to alert him so he could prepare to respond to the government's allegations. (Tr. of 11/12/97 at 170.) For Defendant, the only possible explanation for Mezzaroba's possession of the two documents is that he had a secret deal with the prosecutors, but one would draw that conclusion only if one were already convinced. Defendant's convictions, however, cannot substitute for evidence, and there is no newly discovered evidence that Mezzaroba delivered Defendant's guilty plea in exchange for the government's agreement not to indict him. The evidence Defendant has presented falls far short of sustaining his accusation of a secret and corrupt deal between his attorney and the prosecutors.

IV. CONCLUSION

Once again, Defendant has prevailed upon this Court to re-examine his case, this time on a promise of newly discovered evidence that would require the Court to grant him relief from judgment. Most of the evidence is not newly discovered, and the small amount that can qualify as newly discovered does not begin to prove Defendant's case.

Defendant's argument is based primarily on conjecture, speculation, and reinterpretation of old evidence in an effort to convince the Court that his explanation is the only one that makes sense. His argument rests in part on premises contrary to this Court's decisions: for example, that Mezzaroba inadequately represented Defendant at his sentencing, whereas this Court concluded in its response to Defendant's Motion pursuant to 28 U.S.C.A. § 2255 that the representation was not inadequate. Defense counsel vigorously defended against the government's attempt to increase Defendant's offense level for obstruction of justice and won.

Defendant feels he did not get the benefit of his bargain with the government. He believes that the sentence he got was double the one he should have gotten because he was denied a reduction for acceptance of responsibility. (Tr. of 11/12/97 at 41-42.) In fact, his attorney had estimated that, with a reduction for acceptance of responsibility, he would be sentenced to 2 1/2 to 3 years in prison, whereas he was given over 5 1/2 years. Defendant is understandably upset and disappointed with this outcome and wants it changed. However, the evidence to support his claims is simply not there. Defendant's plea was not coerced. He got a sentence longer than he or his attorney expected because he demonstrated that he had not truly accepted responsibility for his crimes and he still has not. His Motion for Relief from Judgment will be denied.

An appropriate Order follows.

ORDER

AND NOW, this 6th day of February, 1998, upon consideration of Defendant's Pro Se Motion for Relief from Judgment and Request for Hearing Pursuant to Rule 60(b)(1)(3) Fed. R. Civ. Pr. (Doc. No. 159), the government's responses (Doc. Nos. 166, 178) and other supplemental submissions of the parties pertaining to said Motion, **IT IS HEREBY ORDERED** that the Motion is **DENIED.**

BY THE COURT:

John R. Padova, J.

Footnotes

See pg's 1 + 2 Next (over)

AND NOW, this 6th day of February, 1998, upon consideration of Defendant's Pro Se Motion for Relief from Judgment and Request for Hearing Pursuant to Rule 60(b)(1)(3) Fed. R. Civ. Pr. (Doc. No. 159), the government's responses (Doc. Nos. 166, 178) and other supplemental submissions of the parties pertaining to said Motion, **IT IS HEREBY ORDERED** that the Motion is **DENIED.**

BY THE COURT:

John R. Padova, J.

Footnotes

1

The caption of the Motion is a bit confusing. There is no Rule 60(b)(1)(3). Given the statement in the opening paragraph of the Motion, quoted in the text, the Court assumes Defendant means to bring this Motion under subsections (b)(2) (newly discovered evidence) and (b)(3) (fraud, misrepresentation or other misconduct). However, because he is acting *pro se*, the Court will consider his evidence under any appropriate section of Rule 60(b).

2

Hearings were held on Defendant's Motion on November 12 and December 30, 1997. At the second hearing, additional evidence was presented that was not available at the first hearing. The Court will refer to both, collectively, as Defendant's hearing.

3

At his sentencing, Defendant stated under oath that the factual basis for his guilty plea, as set out in the Presentence Investigation Report ("PSI"), was true, with certain minor corrections. At the hearing on the instant Motion, however, he maintained that the PSI was false, while at the same time refusing to acknowledge that he had lied under oath when he told this Court at sentencing that the factual basis for his plea was true. Defendant appeared to be claiming that he merely said what his attorney told him to say, although he did not want to, and therefore the statements, while untrue, were not lies on his part -- an imaginative but unconvincing argument. Defendant again takes incompatible positions: the facts presented in the PSI were false, but Defendant did not lie under oath when he stated at sentencing that they were true. (Tr. of 11/12/97 at 33-35.)

4

The page from the affidavit, which came from Mezzaroba's files, has various handwritten notations to which Defendant seemed to attach importance. He asked Mezzaroba about them, but Mezzaroba testified he did not know who had written them. (Tr. of 11/12/97 at 82-84.)

5

Sidney **Friedler** was subpoenaed to appear at the hearing on December 30, 1997, but was unable to appear for medical reasons.

6

Part of the conversation with **Friedler** suggests that Defendant may previously have known that the government was aware that Zinner paid Mezzaroba's fees from the trust, and that the evidence is therefore not newly discovered, but the conversation is not conclusive. (Tr. of 4/8/97 at 4-5.)

7

Defendant contended that Mezzaroba was trying to persuade Mark Waldron, Sr. that his son should plead guilty as part of the corrupt deal he had with the prosecutors, but Mezzaroba explained that he

considered a guilty plea in Waldron's best interests. He stated he was advising Waldron as well as Defendant because, at that time, it was not determined exactly which attorney would represent which client. (Tr. of 12/30/97 at 53-55.)

Judge Padova Knew
This was False Testimony.
[redacted]
Judge Padova was told by
Mezrenka in Dec. 1994,
That he was Representing
Zivkes "exclusively" and
Friedes was "exclusively" Re
Waldron "Exclusively." Re
Guilt Too Knew This Testimony
was perjury and Suborned by
While Concealing their own motion
which was the key piece of
Evidence to prove the Secret deal
between all Counsel, officers of
the Court. This is fraud upon
the Court by definition—

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

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
v.	:	
EDWARD ZINNER	:	NO. 95-48

ORDER

AND NOW, this 24th day of July, 2019, upon consideration of pro se Petitioner Edward Zinner's "Motion for Relief from Judgment Pursuant to Rule 60(d)(3) Federal Rules of Civil Procedure for Fraud Upon the Court and Conspiracy to Deprive Citizen of Civil Rights by Obstructing Constitutionally Mandated Judicial Functions in Violation of 18 U.S.C. § 241" (Docket No. 259), the Government's opposition thereto, and Petitioner's Reply, **IT IS HEREBY ORDERED** that Petitioner's Motion is **DENIED**.[1]

---

[1] Petitioner pled guilty in 1995 to an Indictment that charged him with racketeering in connection with a fraudulent benefits scheme and, as a result, we sentenced him to 68 months in prison. In 1996, we denied his motion for habeas relief pursuant to 28 U.S.C. § 2255. See United States v. Zinner, Civ. A. No. 96-3959, Crim. A. No. 95-48-01, 1996 WL 628585 (E.D. Pa. Oct. 25, 1996). Thereafter, Petitioner filed a Motion for Relief from Judgment pursuant to Federal Rule of Civil Procedure 60(b). He argued in the 60(b) Motion that new evidence had revealed a secret and corrupt agreement between his lawyer and the government prosecutors, in which his lawyer agreed to deliver Petitioner's guilty plea in exchange for the government agreeing not to pursue charges against him for taking legal fees from a trust fund that was subject to government forfeiture. In 1998, after a full evidentiary hearing, we denied the Rule 60(b) motion, concluding, inter alia, that Petitioner had failed to prove any secret and corrupt deal. (See 2/9/98 Mem., attached as Ex. 2 to Pet'r's Mot., at 17-28.) Now, twenty-one years later, Petitioner has filed the instant independent action pursuant to Federal Rule of Civil Procedure 60(d)(3), asking that we set aside our judgments denying relief under both § 2255 and 60(b) and dismiss the 1995 Indictment against him with prejudice, again because of a secret deal between his counsel and prosecutors that he asserts perpetrated a fraud on the court. (See ECF No. 259, at 104-05.)

"Rule 60(d) is not an affirmative grant of power; it merely provides that the grounds set forth elsewhere in Rule 60 for reconsideration of judgments or orders do not limit a court's power to 'entertain an independent action to relieve a party from a judgment, order, or proceeding,' Fed. R. Civ. P. 60(d)(1), or 'set aside a judgment for fraud on the court,' id. 60(d)(3)." United States v. Brown, Crim. A. No. 99-730, 2013 WL 3742444, at *6 (E.D. Pa. July 17, 2013) (citing United States v. Burke, Crim. A. No. 92-268-1, 2008 WL 901683, at *4 (E.D. Pa. Apr. 2, 2008)); 11

Appendice D

BY THE COURT:

John R. Padova, J.

Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 2868, at 555 (2012). Here, Petitioner appears to argue that we have inherent power in equity to set aside the judgments against him pursuant to Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944). The United States Court of Appeals for the Third Circuit has not definitively determined whether "a fraud upon the court claim under Hazel-Atlas is a basis to avoid the various gate keeping requirements provided by § 2255," such as the prohibition on filing second or successive habeas petitions without the Third Circuit's approval. See, e.g., United States v. Burke, 193 F. App'x 143, 144 (3d Cir. 2006); 28 U.S.C. § 2255(h). However, even if the gate keeping requirements in § 2255 apply to this case, we conclude that at least some aspects of Petitioner's Motion cannot be characterized as a second or successive habeas petition, because they appear not to collaterally attack the underlying conviction but, rather, to challenge only the manner in which the judgments on the prior § 2255 and 60(b) motions were obtained, i.e., by fraud. Gonzalez v. Crosby, 545 U.S. 524, 532 (2005) (explaining that a motion is not a second or successive habeas when it attacks "not the substance of the federal court's resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings").

We nevertheless conclude that Petitioner's claims in his Motion fail on the merits. "In order to receive the extraordinarily rare relief that Hazel-Atlas provides, there must be '(1) an intentional fraud, (2) by an officer of the court; (3) which is directed at the court itself; and (4) in fact deceives the court." Burke, 193 F. App'x at 144 (quoting Herring v. United States, 424 F.3d 384, 386-87 (3d Cir. 2005)). Moreover, "these elements must be supported by 'clear, unequivocal and convincing evidence.'' Id. (quoting Herring, 424 F.3d at 386-87).

Here, as noted above, Petitioner contends that his counsel and the prosecutors misled the court in both the § 2255 and Rule 60(b) proceedings because they fraudulently denied or failed to disclose that they had entered into a secret and corrupt deal to secure Petitioner's guilty plea. In reasserting his claim that there was such a deal, Petitioner relies primarily on new evidence that the Government had drafted but not filed a motion to disqualify his co-Defendant's counsel due to that counsel's representation of Petitioner in earlier proceedings. (See Draft Disqualification Mot., attached as Ex. 1 to Pet'r's Mot.) Petitioner contends that the disqualification motion reveals a previously undisclosed conflict of interest and provides an additional explanation for why both his counsel and his co-Defendant's counsel would encourage him and his co-Defendant to enter into guilty pleas irrespective of their clients' interests. Specifically, Petitioner contends that the Government used the threat of disqualification along with the agreement to permit counsel to keep the fees that they had improperly taken from government forfeiture funds to "lure" counsel into their bribery scheme. (ECF No. 259, at 24-26.) However, we find Petitioner's arguments, like those he made previously, to be "based primarily on conjecture, speculation, and reinterpretation of old evidence in an effort to convince the Court that his explanation is the only one that makes sense." (2/9/98 Mem. at 28.) Petitioner has not put forth the "clear, unequivocal and convincing evidence" of a fraud on the court that is necessary to obtain the "extraordinarily rare relief that Hazel-Atlas provides." Burke, 193 F. App'x at 144 (quotation omitted). We therefore deny his Motion for Relief from Judgment Pursuant to Fed. R. Civ. P. 60(d)(3).

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