CLD-047

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **21-2743**

UNITED STATES OF AMERICA

v.

STEVEN P. GRADOS, Appellant

(W.D. Pa. Crim. No. 2-16-cr-00057-001)

Present: AMBRO, SHWARTZ and BIBAS, Circuit Judges

Submitted are:

(1) Appellant's notice of appeal, which may be construed as a request for a certificate of appealability under 28 U.S.C. § 2253(c)(1);

(2) By the Clerk for possible dismissal due to a jurisdictional defect; and

(3) Appellant's response

in the above-captioned case.

Respectfully,

Clerk

ORDER

This appeal is dismissed for lack of appellate jurisdiction because the notice of appeal was untimely filed. Appellant appeals from the District Court's March 3, 2021, order, which adopted the Magistrate Judge's Report and Recommendation and denied his 28 U.S.C. § 2255 motion. Appellant was required to file his notice of appeal within 60 days of the entry of the order. See Fed. R. App. P. 4(a)(1)(B). Appellant's notice of appeal was filed over six months later, on September 16, 2021. This Court received and reviewed Appellant's explanation of the circumstances that led to late filing. However,

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the time limit is "mandatory and jurisdictional," see Bowles v. Russell, 551 U.S. 205, 209 (2007) (citation omitted), and there is no basis in the record for extending the deadline. Cf. Fed. R. App. P. 4(a)(5)-(7).

We additionally note that Appellant's request in his notice of appeal for an extension of time to file his notice of appeal could not properly be construed as a motion requesting that the time to appeal be reopened, because it was filed more than 180 days after the District Court denied his § 2255 motion. See Fed. R. App. P. 4(a)(6); Baker v. United States, 670 F.3d 448, 450 (3d Cir. 2012).

Finally, we note that before the District Court entered its March 3, 2021 order adopting the Report and Recommendation and denying the § 2255 motion, Appellant filed a notice of appeal directed at the Report and Recommendation itself. Even assuming that Appellant intended for that notice of appeal to be directed to this Court, we would have lacked jurisdiction over that appeal as well. Generally, we may hear appeals only from "final decisions of the district courts of the United States." 28 U.S.C. § 1291. Appellant filed a notice of appeal concerning the Magistrate Judge's Report and Recommendation, which is not appealable within the meaning of § 1291. See Cont'l Cas. Co. v. Dominick D'Andrea, Inc., 150 F.3d 245, 250 (3d Cir. 1998) (explaining that "no appealable decision exists until the district court accepts the magistrate judge's recommendation"). Although the District Court since has entered an order adopting the Report and Recommendation and denying Appellant's 28 U.S.C. § 2255 motion, that order would not cause this appeal to ripen. "There are two ways in which premature appeals can ripen in this Circuit—under Rule 4(a)(2) of the Federal Rules of Appellate Procedure, and under the doctrine based on Cape May Greene, Inc. v. Warren, 698 F.2d 179 (3d Cir. 1983)." Marshall v. Comm'r Pa. Dep't of Corr., 840 F.3d 92, 95 (3d Cir. 2016) (per curiam). Rule 4(a)(2) does not apply to appeals from magistrate judge reports. See id. Cape May Greene does not apply here, either, because this is not a situation involving "a premature notice of appeal, filed after disposition of some of the claims before a district court, but before entry of final judgment, [that ripens] upon the court's disposal of the remaining claims." See ADAPT of Phila. v. Phila. Hous. Auth., 433 F.3d 353, 362 (3d Cir. 2006) (summarizing Cape May Greene). The appeal, therefore, is dismissed.

By the Court,

/s/ THOMAS L. AMBRO
Circuit Judge

Dated: December 22, 2021

A True Copy:
Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate

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

UNITED STATES OF AMERICA	:
v.	: Case No. 2:16-cr-57-KRG-KAP
STEVEN P. GRADOS,	:(Case No. 2:19-cv-1626-KRG-KAP)
Movant	:

Report and Recommendation

Recommendation

The motion to vacate under 28 U.S.C.§ 2255 filed at ECF no. 91 should be denied.

Report

As the Court will recall, this matter was referred to me under 28 U.S.C.§ 636(b)(3) after movant filed a motion to vacate the sentence that this Court imposed on movant on July 21, 2017, after a jury convicted movant on February 24, 2017 of two counts of mail fraud, see 18 U.S.C. §§ 2 and 1341, and one count of knowingly and intentionally forging the signature of a judge of the United States, see 18 U.S.C. § 505.

Taking the facts in the light favorable to the verdict winner, a jury found that in early 2014 movant attempted to defraud his first ex-wife and the Pennsylvania State Employees Retirement System ("SERS") by forging the signature of the Honorable Gary L. Lancaster on a fraudulent Opinion and Order that directed SERS to stop making monthly payments to his first ex-wife of a portion of the pension from movant's service as a Pennsylvania State Trooper pension. The fraudulent Opinion and Order was mailed to SERS in February 2014. When movant saw no change in his monthly pension, he mailed a copy of his purported service copy of the fraudulent Opinion and Order to SERS in May 2014, along with a handwritten note in which he asked SERS to cease payment.

The pension payments to movant's first ex-wife had been ordered by an Illinois judge following divorce proceedings there that began in 2008. Movant had attempted unsuccessfully to reduce these payments in 2011 by filing a *pro se* civil rights complaint in this Court at Grados v. Lanier, 2:11-cv-935-GLL (W.D.Pa.) The matter was assigned to Chief Judge Lancaster, and Chief Judge Lancaster dismissed movant's civil complaint in a signed opinion filed in November 2011 (amended in December 2011). After Judge Lancaster's untimely death on April 24, 2013, movant forged the fraudulent Opinion and Order and attempted to make it look genuine by tracing Judge Lancaster's genuine signature from a document in Grados v. Lanier on the fraudulent document and dating it April 1, 2013.

In addition to other witnesses in movant's trial, Chief Judge Lancaster's courtroom

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deputy and one of his law clerks testified, as did an expert witness in handwriting analysis, about the different ways it could be determined that the fraudulent Opinion and Order could be determined to be not genuine. The witness that directly connected movant to the fraudulent Opinion and Order and the source of the evidence that the jury must have found credible in order to convict movant was his then-estranged second wife, later second ex-wife, who aided movant in the forgery and the mailing. She testified under a promise of immunity.

Because of the amount of evidence that the fraudulent Opinion and Order was fraudulent, the defense focused on the role of the second ex-wife. The defense theory of the case was that the second ex-wife, without movant's knowledge, planned and executed the fraudulent scheme because she was planning to initiate divorce, custody, and support proceedings against movant in the summer of 2014. According to the movant, her motives were twofold: if the scheme succeeded, decreasing the payment to movant's first ex-wife would increase the resources flowing to movant and benefit her because it would lead to an increase in movant's ability to pay her spousal support; if the scheme failed, her blaming movant would at the least impair his ability to get a favorable custody decision involving the child the two of them had had together.

After the verdict, movant's trial counsel filed two unsuccessful motions for new trial, to which the government responded. Movant then filed a fourteen-paragraph *pro se* reply to the government's response. See ECF no. 56. After sentence, movant retained new counsel who filed a notice of appeal and also unsuccessfully sought to have service of the sentence stayed pending appeal. The brief submitted on direct appeal contained five claims that the Court of Appeals condensed to four claims: (1) prosecutorial misconduct in eliciting testimony that movant called his second ex-wife a "bitch" (and ineffective assistance of trial counsel in failing to object); (2) prosecutorial misconduct in asking movant's character witnesses a guilt-assuming hypothetical question (this was allegedly in violation of the Court's ruling as to an objection made by counsel; there was also a claim of ineffective assistance of trial counsel where counsel had not objected); (3) the Court's error in failing to declare a mistrial requested by movant's trial counsel after a guilt-assuming hypothetical question; and (4) ineffective assistance of trial counsel in failing to object to an improper jury instruction regarding character testimony. The Court of Appeals affirmed the conviction, remarking that any ineffectiveness claims should be raised in a motion to vacate. United States v. Grados, 758 Fed.Appx. 247 (3d Cir. 2018). Movant then filed *pro se* a timely motion to vacate, and appellate counsel withdrew, in December 2019.

Movant filed a motion for recusal in January 2020, which was denied and the subject of a *pro se* interlocutory appeal at United States v. Grados, No. 20-1258 (3d Cir. August 10, 2020). After the matter was referred to me, movant filed three motions in May 2020 that were denied. That denial led to a second *pro se* interlocutory appeal at United

States v. Grados, No. 20-2392 (3d Cir. December 1, 2020). Movant also filed a motion for a default judgment at the civil case number.

That motion for a default judgment is denied. By the very nature of the writ of habeas corpus, which from the Habeas Corpus Act of 1679 until today has been understood to be a mechanism for bringing a party into court to review the cause of detention and not an action for judgment in itself, default judgments have always been regarded as inappropriate in habeas matters. See Allen v. Perini, 424 F.2d 134, 138 (6th Cir.1970)("We conclude that in spite of the untimeliness of the State's return, the District Court would have no power to grant the writ of habeas corpus in the absence of an evidentiary hearing and unless and until the averments of the petition have been proved by competent evidence."); U.S. ex rel. Mattox v. Scott, 507 F.2d 919, 924 (7th Cir.1974)("We agree with the Sixth Circuit and Professor Moore's treatise that the Advisory Committee did not intend to provide for a habeas corpus petitioner's release in the event of a failure to make a timely return, for the burden of default would then fall upon the community at large.") That a default judgment is inappropriate is even more certain in the absence of prejudice. See Burkett v. Fulcomer, 951 F.2d 1431, 1448 (3d Cir.1991)(Purpose of the remedy in habeas is to "rectify the prejudice suffered.") Because the civil rules expressly conform current procedure to prior procedure, default judgments are not authorized in habeas corpus. See Fed.R.Civ.P. 81(a)(4)(B)(Federal Rules of Civil Procedure are applicable in habeas to the extent that they conform to prior practice).

Movant's motion to vacate has nineteen separately numbered claims. Despite the seeming specificity that so many claims imply, each claim simply begins with a heading asserting "prosecutorial misconduct, ineffective assistance of counsel, right to due process violation," in most cases without discussion of legal authority. More importantly, movant does not cite where in the record the factual underpinnings for movant's discussion of each claim might appear. Perhaps that is because many of the narrative discussions following the claims are similar to if not identical to the paragraphs of the *pro se* pleading at ECF no. 56 that was filed several months before the transcript was prepared. In a few cases where the relevant part of the trial transcript can be identified, the reason for the lack of citation to the record is obvious: movant either mischaracterizes or misstates the record outright. In the very first claim, for instance, movant asserts that trial counsel "stated that he did not know what the first witness ... was going to testify to. This fact is contained in the trial transcript." Presumably this is offered as support for a claim of ineffective assistance of counsel. In fact, what trial counsel did was ask for an offer of proof because "I want to know what she is going to say." ECF no. 80 at 34. Movant adds, presumably as part of a claim of prosecutorial misconduct, that he himself "was also unaware of [the witness'] scope of testimony because it was withheld by the prosecution team." Movant is not making a Jencks Act claim, nor is he making a Brady v. Maryland claim: he simply leaps from his mischaracterization of trial counsel's routine and

unremarkable request for an offer of proof to an unsupported innuendo about the prosecutor.

Going forward, I will not scour the record where movant has not cited it to see if the record might relate in some way to what he might be driving at, because "conclusory arguments, without any citation to authority or the record," are not favored and may properly be held to waive a claim, Mierzwa v. Dudek, 793 Fed.Appx. 105, 108 (3d Cir. 2019), cert. denied, No. 20-235, 2020 WL 6385812 (U.S. Nov. 2, 2020), and courts should not be expected to bolster arguments for a party by *sua sponte* looking for evidence that might support them. See United States v. Carrion-Soto, 493 Fed. Appx. 340, 343 (3d Cir.2012)(Judge McKee, citing his concurrence in Pontarelli v. U.S. Dep't of the Treasury, 285 F.3d 216, 238 (3d Cir.2002), quoting in turn Judge Aldisert in United States v. Gibbs, 813 F.2d 596, 603 (3d Cir.1987).

Movant's assertions of prosecutorial misconduct deserve no discussion for another reason. Prosecutorial misconduct, in each case mentioned by movant, would properly have been raised in the direct appeal: a movant cannot save issues to raise them for the first time in a collateral attack. See Massaro v. United States, 538 U.S. 500, 504 (2003); United States v. Frady, 456 U.S. 152, 167-68 (1982). To avoid the default of such claims that were not presented in the direct appeal, movant must show that there was cause for the omission, typically by showing ineffective assistance of counsel. Movant here must show not only that there was a substantial claim of prosecutorial misconduct (either objected to by trial counsel or not objected to due to ineffective assistance of trial counsel) but also that the error was such a glaringly obvious reversible error that appellate counsel was ineffective for failing to select it as one of the issues to raise on direct appeal. Since few lawyers are unaware of the admonition from members of the Court of Appeals for the Third Circuit that appellate courts believe that "the number of claims raised in an appeal is usually inversely proportional to their merit," United States v. Bergrin, 599 Fed.Appx. 439, 441 (3d Cir. 2014), proving the ineffectiveness of counsel on direct appeal this way is difficult. Movant does not even attempt this task.

Turning to the movant's many claims of a due process violation based on the assertion that a witness committed perjury, a federal court has a supervisory duty to ensure that a defendant is not convicted on tainted testimony. Mesarosh v. United States, 352 U.S. 1, 9 (1956). Where proof of false testimony affects the sufficiency of the evidence or the credibility of government witnesses, a new trial should be ordered. See United States v. Willis, 467 F. Supp. 1111, 1112–13 (W.D.Pa.1979) That does not mean endless *de novo* re-examination of witness testimony without regard to materiality. United States v. Rottschaefer, 178 Fed.Appx. 145, 150 (3d Cir.2006). A conclusory assertion that a witness testified falsely is not a valid claim of perjury. Proof of an inconsistency between a prosecution and defense witness is not evidence of perjury either, nor is inconsistency between the testimony of two prosecution witnesses. Discrepancy is not enough to prove

perjury. Lambert v. Blackwell, 387 F.3d 210, 249 (3d Cir. 2004) Even recantation of testimony by a witness does not prove that the witness' testimony at trial was false. Raines v. United States, 434 F. Supp. 1168, 1173 (W.D. Pa. 1977). To vacate a conviction due to perjury by a prosecution witness a movant must show that: 1) the testimony was in fact false; and the government knew or had constructive knowledge of its falsity. Lambert v. Blackwell, supra; Holleman v. United States, 721 F.2d 1136, 1138 (7th Cir. 1983).

Movant attempts to establish the second element by asserting throughout his motion that he put the government on notice of the falsity of the prosecution witnesses' testimony by filing ECF no. 56, his *pro se* reply to the government's response to his counsel's motions for a new trial. Even if a defendant's *ipse dixit* were adequate to prove notice - and it is not - by movant's account this was done in late April 2017, that is after trial. Movant makes no attempt to establish that the government knew at trial or believes to this day that any of its witnesses testified falsely.

As for the first element of his witness perjury claims, for the most part movant simply summarizes what he thinks a witness testified to, asserts a contradictory version of facts based on his recollection of the testimony at trial or his analysis of the testimony at trial, and draws a conclusion that perjury has been proved. Deciding which witness is more credible is the function of the finder of fact at trial. To prove perjury, there must be some evidence that discredits the witness beyond the conflicting stories already heard by the jury. Usually this implies that some new information has come to the defendant's notice after trial. See Brown v. United States, 556 F.2d 224, 227 (3d Cir. 1977) (observing that the alleged perjury was known to both the defendant and his counsel at the time of trial and that this was "fatal" to the motion to vacate.) Movant offers nothing like this.

Movant makes a conclusory assertion of ineffective assistance of counsel in the heading of almost every claim. Ineffective assistance of counsel is never established by a claim that a course taken by defense counsel did not result in acquittal or a claim that some course of conduct other than the one taken might have worked better: to prove the ineffective assistance of counsel, counsel's actions or inactions must be shown to be without any reasonable basis (based on information available at the time) to support any one of the "countless" sound trial strategies possible. Strickland v. Washington, 466 U.S. 668, 689 (1984). As the Supreme Court has also stated:

When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he did so for tactical reasons rather than through sheer neglect. That presumption has particular force where a petitioner bases his ineffective-assistance claim solely on the trial record, creating a situation in which a court may have no way of knowing whether a seemingly unusual or misguided action by counsel had a sound strategic motive. Moreover, even if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.

Yarborough v. Gentry, 540 U.S. 1, 8 (2003)(internal quotations and citations omitted).

Claim number one asserts that movant's first ex-wife testified falsely about the movant's statements in the course of her conversation with movant about the divorce proceedings in Illinois and how much of movant's pension should be awarded to her. It is a lengthier restatement of the first Paragraph 5 of ECF no. 56. Since the claim was known to movant in April 2017, his failure to raise it on direct appeal coupled with his failure to allege how appellate counsel was ineffective for not preserving this claim waives it.

Claims number two and three assert that the divorce lawyer for movant's first ex-wife testified falsely about movant's actions in the Illinois divorce proceedings. They are a lengthier restatement of the second Paragraph 5 of ECF no. 56. Since the claim was known to movant in April 2017 (in fact he bases his claim that the government knew of the alleged perjury on his account that he told the prosecutors about it before the appellate briefs were filed), his failure to raise it on direct appeal coupled with his failure to allege how appellate counsel was ineffective for not preserving this claim waives it.

Claim number four asserts only prosecutorial misconduct and ineffective assistance of counsel, specifically that the prosecution's theory that movant forged the fraudulent Opinion and Order makes "no sense" because the Opinion and Order contains factual errors. Even if that were a basis for a claim of prosecutorial misconduct, once again it was known to movant at trial, it was not included on direct appeal, its omission is not alleged to be ineffective assistance on the part of appellate counsel, and is waived.

Claim number five asserts that the lawyer for SERS testified about the whether a particular copy of the fraudulent Opinion and Order sent to SERS was an original or a copy, but that there was no proof of the chain of custody of the document. Movant concludes from this that the witness testified falsely, that the prosecution knew her testimony was false, and that movant's trial counsel was ineffective because he failed to cross examine the witness on this point. Even if this claim had merit and had been preserved, the defense was based on blaming the second ex-wife rather than on challenging the existence of the fraudulent Opinion and Order. No ineffectiveness claim can be premised on trial counsel's failure make a chain of custody objection where such an objection had no relation to the trial strategy.

Claims number six, seven, and eight assert that movant's second ex-wife testified falsely about movant's forgery of Chief Judge Lancaster's signature, about movant's role in the mailing of the fraudulent Opinion and Order, and about movant's calling to determine whether SERS had changed the pension payments in response to the fraudulent Opinion and Order. These are lengthier restatements of the material contained in Paragraphs 7, 8, and 10 of ECF no. 56. Since the claims were known to movant at the trial (and put in writing no later than April 2017) his failure to raise them on direct appeal

coupled with his failure to allege how appellate counsel was ineffective for not preserving these claims waives them.

As an aside, the previous three claims, although styled as due process or perjury claims, are really an attempt to get a second shot at arguing the credibility of the prosecution's witnesses and the weight of the evidence. In conducting plain error review of the claims movant did raise on direct appeal, the Court of Appeals considered the impact of those alleged errors and concluded they "did not affect the outcome of the proceeding in light of the entire trial." 758 Fed.Appx. at 251. Conducting a sufficiency or weight of the evidence review is improper in a collateral attack; it is doubly improper where the appellate court has already done so.

Claim number nine asserts that the mother of movant's second ex-wife testified falsely about movant's acquisition of a computer to assist in the production of the fraudulent Opinion and Order, and claim number ten asserts that movant's second ex-wife testified falsely about movant telling her about the disposal of the computer used in the production of the fraudulent Opinion and Order. Claims number eleven and twelve assert that the mother of movant's second ex-wife testified falsely about her sentiments about who should get custody of the daughter of movant and his second ex-wife, and about her knowledge of the second ex-wife's role in the fraudulent scheme. These claims are more elaborate versions of the material contained in Paragraphs 9 and 10 of ECF no. 56. Once again, the claims were known to movant at the trial. His failure to raise these claims on direct appeal coupled with his failure to allege how appellate counsel was ineffective for not preserving them waives them.

One claim in the group above does not fall into this category. That is movant's claim that the movant has a tape of a message left by the mother on the phone of another witness, that this tape would have been impeachment evidence as to the mother's credibility, and that movant played this tape for trial counsel but trial counsel refused to use it. This claim of ineffectiveness of trial counsel would be one properly raised for the first time in a motion to vacate. As it is framed by the movant, however, it deserves no hearing. It is a message in which the second ex-wife's mother allegedly calls and asks for a person to call her back, allegedly in order to have that person change testimony she gave to a psychologist appointed to interview witnesses in the divorce and custody proceedings between movant and his second ex-wife in the period after the fraudulent scheme was executed. Since movant does not even claim that there was any evidence about what that alleged change would be, much less that it would have related to the fraudulent scheme, he states no colorable claim of trial counsel's ineffectiveness.

Claims number thirteen and fourteen and fifteen, which re-travel some of the ground covered in claim number nine, assert that the FBI agents who investigated this matter misstated where they were, what they did, and what movant said and did at various

times during their interview of movant. It is an expansion of Paragraphs 6, 10, and 11 of ECF no. 56. Since the basis for these claims was known to movant at the time of trial, his failure to raise them on direct appeal coupled with his failure to allege how appellate counsel was ineffective for not preserving the claims waives them. Movant's unsupported throw-away line at the end of claim number fourteen that the prosecutor vouched for the credibility of the FBI agents is waived for the same reason.

Claim number sixteen asserts that a witness for the prosecution testified falsely about his being unable to retrieve Illinois divorce records by searching online versus by contacting the DeKalb County Clerk. This apparently was in rebuttal to movant's testimony that anyone (including his second ex-wife) who did an online search of his name could have obtained all the documents allegedly used from his divorce proceedings. Movant's only basis for claiming this witness testified falsely is his statement that movant personally knows that the records were online "for a long period of time." This does not even contradict what the witness testified to, much less show that the testimony it is false. Since it is a version of Paragraph 13 of ECF no. 56, it would be waived if it were a colorable claim.

Claim number seventeen asserts that trial counsel ordered him to testify falsely at trial, and movant did not. The prosecution then allegedly persuaded the Court to enhance movant's sentence for testifying truthfully. The Court will recall that the enhancement for obstruction of justice was the subject of lengthy discussion at sentencing, and that the Court found that one of the grounds for a two-level enhancement was proved. However, on direct appeal there was no challenge to the sentence. That precludes a claim of prosecutorial misconduct in this motion. Since movant alleges he refused to testify falsely, his allegation about counsel's direction to testify falsely caused no legally significant event, and does not support a claim of ineffective assistance of counsel.

Claim number eighteen asserts that the prosecution's handwriting expert testified falsely because movant's opinion differs from the expert's. It is different version of the attack on the witness' testimony in Paragraph 12 of ECF no. 56. Since the claim was known to movant in April 2017, if it were a colorable claim his failure to raise it on direct appeal coupled with his failure to allege how appellate counsel was ineffective for not preserving this claim waives it.

Claim number nineteen asserts that the government committed prosecutorial misconduct by asking an improper hypothetical of two of movant's character witnesses. This was addressed in the direct appeal and cannot be revisited in the motion to vacate.

Movant also seems to be making a cumulative error claim, but that doctrine is actually a cumulative prejudice doctrine that requires proof that individual errors, when considered together, had a substantial impact on the trial. United States v. Salehi, 187

Fed.Appx. 157, 169 (3d Cir. 2006). The doctrine does not allow a movant to claim that several rulings, none of which has been shown to be erroneous, nonetheless in the aggregate had an improper impact on the trial because the rulings might have gone differently.

Movant has made no showing of the denial of any constitutional right and no certificate of appealability should be issued. 28 U.S.C. § 2253(c)(2)(requiring a substantial showing of the denial of a constitutional right).

Pursuant to 28 U.S.C.§ 636(b)(1), the parties have fourteen days to file written objections to this Report and Recommendation. In the absence of timely and specific objections, any appeal would be severely hampered or entirely defaulted. See EEOC v. City of Long Branch, 866 F.3d 93, 100 (3d Cir.2017) (describing standard of appellate review when no timely and specific objections are filed as limited to review for plain error).

DATE: 4 January 2021

Keith A. Pesto,
United States Magistrate Judge

Notice by ECF to counsel of record and by U.S. Mail to:

Steven P. Grados
211 Thomas Drive
Pittsburgh, PA 15236

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

UNITED STATES OF AMERICA	:
v.	: Case No. 2:16-cr-57-KRG-KAP
STEVEN P. GRADOS,	:(Case No. 2:19-cv-1626-KRG-KAP)
Movant	:

Order

This matter was referred to Magistrate Judge Keith A. Pesto for proceedings in accordance with the Magistrates Act, 28 U.S.C.§ 636, and Local Civil Rule 72.

The Magistrate Judge filed a Report and Recommendation on January 4, 2021, ECF no. 121, recommending that the motion to vacate at ECF no. 91 be denied and that no certificate of appealability be issued.

The parties were notified that pursuant to 28 U.S.C.§ 636(b)(1) they had fourteen days to file written objections to the Report and Recommendation. Movant filed objections at ECF no. 122 to the Report and Recommendation, which the Magistrate Judge addressed in a Memorandum at ECF no. 123 that noted that movant should be considered as having appealed from the Order at ECF no. 110. Movant filed a response to that at ECF no. 124.

After *de novo* review of the record, the Report and Recommendation and the objections thereto, including the movant's filing at ECF no. 124, the following order is entered:

AND NOW, this 2ND day of March 2021, it is

ORDERED that the motion to vacate at ECF no. 91, is denied, as is the appeal from the Order at ECF no. 110. No certificate of appealability is issued. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark the civil matter closed.

BY THE COURT:

Kim R. Gibson

KIM R. GIBSON,
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-2743

UNITED STATES OF AMERICA,

v.

STEVEN P. GRADOS

Appellant

(District Court No.: 2-16-cr-00057-001)

SUR PETITION FOR REHEARING

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

The petition for rehearing filed by **appellant** in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/THOMAS L. AMBRO

Dated: February 24, 2022
Sb/cc: Steven P. Grados
Laura S Irwin, Esq.

APPENDIX Q