NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1542

EARL C. HANDFIELD, II,
Appellant

v.

SUPERINTENDENT ROCKVIEW SCI; DISTRICT ATTORNEY CHESTER COUNTY; ATTORNEY GENERAL PENNSYLVANIA

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2-17-cv-01634)
District Judge: Hon. Jeffrey L. Schmehl

Submitted Under Third Circuit LAR 34.1(a)
September 9, 2022

Before: JORDAN, HARDIMAN, and SMITH, *Circuit Judges*.

(Filed: September 14, 2022)

OPINION*

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

HARDIMAN, *Circuit Judge*.

Earl Handfield appeals an order of the District Court denying his motion for relief under Rule 60(d) of the Federal Rules of Civil Procedure. The crux of Handfield's claim is that the Commonwealth of Pennsylvania failed to produce exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Because Handfield cannot show prejudice from any *Brady* violation, we will affirm.

I

A jury convicted Handfield of first-degree murder and possessing an instrument of crime. One of the Commonwealth's most important witnesses, who testified pursuant to a cooperation agreement, saw Handfield fire a warning shot at Corey Jennings before chasing him into an alley. The witness heard multiple gunshots before Handfield emerged from the alley alone. Handfield told the witness that he shot Jennings.

Handfield's girlfriend, Adrienne Beckett, also testified. She said that Handfield came to her home the night of the shooting. According to Beckett, she asked what happened, and Handfield responded that "he had to do what he had to do." App. 1031. Handfield then drove her to Maryland, where he left the gun in a dumpster. Beckett at first lied to the grand jury about the events of that night, but she later came clean and testified at trial to avoid perjury charges. On cross-examination, Handfield's attorney impeached Beckett by citing apparent inconsistencies between her version of the night's events and her phone records. Still the jury returned a guilty verdict, which was affirmed on appeal. *Commonwealth v. Handfield*, 34 A.3d 187, 188 (Pa. Super. Ct. 2011).

Handfield filed for post-conviction relief in state court. As relevant here,

Handfield argued that his trial counsel was ineffective for failing to call Beckett's son, Willie Suber, who could have refuted his mother's testimony. In an amended petition, Handfield claimed—for the first time—that the Commonwealth did not fulfill its *Brady* obligations because it failed to turn over a video of Suber's police interview.

At the post-conviction relief hearing, Handfield's trial counsel, Joseph Green, testified that he knew Suber had told police that Handfield did not visit Beckett's house on the night of the murder. Green had a summary of Suber's statement but never saw the video recording. Green testified that he decided not to call Suber because he did not want to "beat up" the son of the prosecution's witness, fearing that tactic would make Beckett more sympathetic to the jury. App. 1830. So he employed a different strategy to impeach her credibility. At the post-conviction relief hearing, Green saw the recorded statement for the first time. He admitted that "the video had much more detail than the statement that [h]e had." App. 1844. Yet when asked whether it would have changed his trial strategy, Green testified, "I don't know." App. 1843.

The Court of Common Pleas denied Handfield's petition for post-conviction relief. It held, among other things, that Handfield suffered no prejudice from any alleged *Brady* violation. The Superior Court affirmed, although it resolved the *Brady* claim by concluding it was "waived." *Commonwealth v. Handfield*, 2016 WL 5266564, at *5, *10 (Pa. Super. Ct. July 20, 2016). Handfield then filed a federal habeas petition, which the Magistrate Judge recommended denying because "Mr. Suber's testimony would not have produced a different verdict." *Handfield v. Garman*, 2017 WL 8222645, at *19 (E.D. Pa. Oct. 11, 2017). The District Court adopted the Magistrate's recommendation. *Handfield*

v. Garman, 2018 WL 1317762, at *1 (E.D. Pa. Mar. 14, 2018). We declined to issue a certificate of appealability. *Handfield v. Superintendent Rockview SCI*, 2018 WL 9786885, at *1 (3d Cir. Oct. 15, 2018), *cert. denied*, 140 S. Ct. 181 (2019).

Handfield then moved for relief from judgment under Federal Rule of Civil Procedure 60(b). In an amendment to that motion, he renewed his claim that the habeas court misapplied *Brady*, citing our decision in *Dennis v. Secretary, Pennsylvania Department of Corrections*, 834 F.3d 263 (3d Cir. 2016). The District Court denied that motion. *Handfield v. Garman*, 2019 WL 4752025, at *2 (E.D. Pa. Sept. 30, 2019). We again declined to issue a certificate of appealability. *Handfield v. Superintendent Rockview SCI*, 2020 WL 2061563, at *1 (3d Cir. Feb. 18, 2020).

Handfield responded by filing a motion for relief from judgment under Rule 60(d), asserting that the District Court incorrectly denied his Rule 60(b) motion. The District Court also denied that motion, *Handfield v. Garman*, 2020 WL 868126, at *1 (E.D. Pa. Feb. 21, 2020), but this time we granted a certificate of appealability on the *Brady* issue.

II[1]

The standard of review imposes a heavy burden on Handfield. In a typical case, we may grant habeas relief only if the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the

[1] The District Court had jurisdiction under 28 U.S.C. §§ 2241, 2254. We have jurisdiction under 28 U.S.C. §§ 1291, 2253.

Supreme Court of the United States." 28 U.S.C. § 2254(d)(1).[2] But this is not a typical habeas case. Rather, it is an appeal from the District Court's order denying the Rule 60(d) motion, seeking relief from the order denying the Rule 60(b) motion, which in turn sought relief from the order denying habeas relief. We review a District Court's denial of a Rule 60(d) motion for abuse of discretion. *Jackson v. Danberg*, 656 F.3d 157, 162 (3d Cir. 2011). And in this layered posture, we will grant relief only if the District Court committed "a serious error of law or a mistake in considering the facts" in holding that the state court's decision was not "contrary to" or "an unreasonable application" of federal law. *See id.*; 28 U.S.C. § 2254(d)(1).

Even if the Suber video constituted *Brady* material, Handfield is entitled to a writ of habeas corpus only if he shows that "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Strickler v. Greene*, 527 U.S. 263, 280 (1999) (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)).; *see also United States v. Zayas*, 32 F.4th 211, 230 (3d Cir. 2022) ("Our prejudice inquiry turns on whether the defendant received a fair trial, one resulting in a verdict worthy of confidence, in the absence of the evidence [the

[2] Under AEDPA's deferential standard, we review the Court of Common Pleas' decision denying Handfield's post-conviction relief petition because it is "the state courts' last reasoned opinion on this topic." *Bond v. Beard*, 539 F.3d 256, 289 (3d Cir. 2008). The Superior Court held that Handfield had waived his *Brady* claim, and it did not address the Court of Common Pleas' alternative holding rejecting the claim on the merits. *Handfield*, 2016 WL 5266564, at *5. Regardless of whether that holding means Handfield's claim is procedurally defaulted, we are authorized to reject the claim on the merits, 28 U.S.C. § 2254(b)(2), and we do so.

prosecution failed to turn over]."").

As the state court recognized, Handfield did not carry this heavy burden. His trial counsel, Green, testified at the post-conviction relief hearing that he made a strategic decision not to call Suber. Green did not want to "beat up" the son of the prosecution's witness. App. 1830. Instead, he employed a different impeachment strategy. After watching the video of Suber's police interview, Green admitted that "the video had much more detail than the statement." App. 1844. Yet Green demurred on whether the video would have changed his trial strategy: "If you're asking me would that video have led me to different conclusions, I don't think I can say one way or the other." App. 1843.

Handfield asks us to ignore Green's testimony because only a constitutionally ineffective lawyer would have failed to call Suber after seeing the video of his police interview. We disagree. Green had good reason not to call Suber at trial, considering he had other avenues to impeach Beckett without making her look sympathetic to the jury as a mother. Green focused on Beckett's different versions of that night and emphasized the apparent conflict between the timeline she described at trial and her phone records. Moreover, Suber's testimony at the post-conviction relief hearing vindicated Green's tactical decision. There, Suber testified that he "might have left [his mother's house] sometime" on the night of the murder, so he could not say that Handfield never came to the house that night. App. 1911–12. Suber also admitted to smoking and dealing marijuana around the time of the murder, although he denied being high that night.

In sum, counsel's strategic decision not to call Suber to testify at trial is supported by the record, regardless of the content of the video. So as the state court rightly

recognized, Handfield cannot show that "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Strickler*, 527 U.S. at 280 (quoting *Bagley*, 473 U.S. at 682).

* * *

For the reasons stated, the District Court did not abuse its discretion in denying Handfield's Rule 60(d) motion. We will therefore affirm.

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1542

EARL C. HANDFIELD, II,
Appellant

v.

SUPERINTENDENT ROCKVIEW SCI; DISTRICT ATTORNEY CHESTER COUNTY; ATTORNEY GENERAL PENNSYLVANIA

(D.C. No. 2:17-cv-01634)

SUR PETITION FOR PANEL REHEARING

Present: JORDAN, HARDIMAN, and SMITH, *Circuit Judges*.

The petition for rehearing filed by Earl C. Handfield, II, in the above-entitled case having been submitted to the judges who participated in the decision of this Court, it is hereby ORDERED that the petition for rehearing by the panel is denied.

BY THE COURT,

s/ Thomas M. Hardiman
Circuit Judge

Dated: November 29, 2022
tmk/cc:
Claudia B. Flores, Esq.
Nicholas J. Casenta, Jr., Esq.
Gerald P. Morano, Esq.
Erik T. Walschburger, Esq.
Ronald Eisenberg, Esq.

Appendix A

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

EARL C. HANDFIELD, II,	:	
Petitioner,	:	
	:	
v.	:	**CIVIL ACTION NO. 17-CV-1634**
	:	
MARK GARMAN, *et al.*,	:	
Respondents.	:	

ORDER

AND NOW, this 20th day of February, 2020, in consideration of Petitioner Earl C. Handfield's Motion for Habeas Relief to Prevent a Grave Miscarriage of Justice under Rule 60(d)(1) (ECF No. 33); Amended 60(D)(1) Motion (ECF No. 38); Second Amended 60(D)(1) Motion (ECF No. 39); and Motion to Proceed *In Forma Pauperis* (ECF No. 35), it is **ORDERED** that:

1. The Motion for Habeas Relief to Prevent a Grave Miscarriage of Justice under Rule 60(d)(1) (ECF No. 33), Amended 60(D)(1) Motion (ECF No. 38), and Second Amended 60(D)(1) Motion (ECF No. 39) are **DENIED** for the reasons set forth in the Court's Memorandum accompanying this Order.

2. The Motion to Proceed In Forma Pauperis (ECF No. 35) is **DENIED AS UNNECESSARY** since Handfield has already paid the $5 filing fee for this case.

3. A Certificate of Appealability is **DENIED** pursuant to 28 U.S.C. § 2253(c).

BY THE COURT:

/s/ Jeffrey L. Schmehl
JEFFREY L. SCHMEHL, J.

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

EARL C. HANDFIELD, II, **Petitioner,**	:	
v.	:	**CIVIL ACTION NO. 17-CV-1634**
MARK GARMAN, *et al.*, **Respondents.**	:	

MEMORANDUM

SCHMEHL, J. /s/ JLS **FEBRUARY 20, 2020**

Pro se Petitioner Earl C. Handfield, II, a prisoner in state custody serving a life sentence for a first-degree murder conviction in Chester County, Pennsylvania, has filed a Motion for Relief from Judgment Under Fed. R. Civ. P. 60(d) (ECF No. 33), an Amended Motion pursuant to Rule 60(d) (ECF No. 38) and a Second Amended Rule 60(d) Motion (ECF No. 39). Handfield's filings challenge the Court's denial of his earlier Rule 60(b) Motion (*see* ECF Nos. 26, 27). The Court denied the Motion because it was a disguised second or successive Petition for Writ of Habeas Corpus. (*See* ECF Nos. 30, 31). For the following reasons, the pending Motions are also denied.

I. BACKGROUND

The procedural history and factual background of Handfield's state court conviction are fully set forth in the Report and Recommendation prepared by Magistrate Judge Thomas J. Rueter. (ECF No. 14.) Accordingly, the Court outlines only the information necessary to place the instant Motions in context. Following the Court's adoption of the Report and Recommendation (*see* ECF No. 22), Handfield filed a Notice of Appeal and an application to stay proceedings. (ECF Nos. 24, 25.) Before the appeal was decided, he filed a Motion for relief

from judgement pursuant to Rule 60(b).[1] (ECF Nos. 26, 27.) After the appeal was denied, the Court entered a Memorandum and order on September 30, 2019, denying the Rule 60(b) Motion because it was, in actuality, a second or successive habeas petition. Handfield did not seek reconsideration of that decision under Rule 59, but rather filed an application for a certificate of appealability of that Order[2] (ECF No. 32), followed thereafter by the three pending Motion filed pursuant to Rule 60(d)(1). His application for a certificate was denied on February 18, 2020. *See Handfield v. Superintendent Rockview SCI*, No. 19-3537 (3d Cir. Feb. 18, 2020).

In the current Motions, which the Court will consider collectively, Handfield seeks relief pursuant to Rule 60(d). He again asserts error in the manner in which his actual innocence/*Brady* claim was assessed and argues that the Court's prior failure to address and consider the claim undermines the integrity of the denial of his Rule 60(b) Motion. (ECF No. 39 at 5-9; ECF No. 33 at 7.)[3] Specifically, he invokes Rule 60(d)(1) because, he asserts, the Court's determination that his Rule 60(b) Motion constituted a second or successive habeas petition was a procedural defect that can itself be reviewed under Rule 60(d). (ECF No. 38 at 5.)

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[1] Handfield argued in the Motion that the Order adopting the Report and Recommendation was an erroneous application of *Brady v. Maryland*, 373 U.S. 83 (1963) and *Dennis v. Sec'y, Pa. Dep't of Corr.*, 834 F.3d 263 (3d Cir. 2014). (*See* ECF No. 27 at 5.)

[2] In the application, Handfield argued, *inter alia*, that he should be allowed to appeal because this Court (1) failed to assess whether his actual innocence claims were sufficiently credible to excuse any procedural default, and failed to consider actual innocence as an equitable factor to support "extraordinary circumstances under 60(b)(6)"; (2) violated his equal protection rights by denying him relief under *Martinez v. Ryan*, 566 U.S. 1 (2012) where another individual in similar circumstances was afforded relief; (3) and erred in applying *Brady* and *Dennis*. (*See Handfield v. Superintendent Rockview SCI*, No. 19-3537 (3d Cir. Doc. # 003113392989 at 2.)

[3] The Court adopts the pagination supplied by the C/ECF docketing system.

II. DISCUSSION

A. Federal Rule of Civil Procedure 60

Federal Rule of Civil Procedure 60(b) provides as follows:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). Rule 60(d)(1) permits the Court to "entertain an independent action to relieve a party from a judgment, order, or proceeding." Fed. R. Civ. P. 60(d)(1). An independent action under Rule 60(d) "should be available only to prevent a grave miscarriage of justice." *United States v. Beggerly*, 524 U.S. 38, 47 (1998).

When a Rule 60(b) motion seeks to collaterally attack the petitioner's underlying conviction, the motion should be treated as a second or successive habeas petition. *Pridgen v. Shannon*, 380 F.3d 721, 727 (3d Cir. 2004). A Rule 60(d) motion is subject to the same successive petition restrictions that apply to Rule 60(b) motions. *See Sharpe v. United States*, Civ. A. No. 02-771, 2010 WL 2572636, at *2 (E.D. Pa. June 22, 2010); *United States v. Franklin*, Crim. No. 99-238, 2008 WL 4792168, at *3 (E.D. Pa. Oct. 31, 2008). Moreover, Rule 60 cannot be used as a substitute for an appeal. *Morris v. Horn*, 187 F.3d 333, 340-41 (3d Cir. 1999).

III. DISCUSSION

Handfield's currently pending pleadings do not state a basis for Rule 60(d) relief; rather, the error he alleges in the Court's adjudication of his prior Rule 60(b) Motion would be grounds for an appeal. Handfield, in fact, did apply for a certificate of appealability following the denial of the Rule 60(b) Motion and raised the same type of issues he now seeks to present under the guise of Rule 60(d). This is not a proper use of Rule 60(d) since Handfield seeks to use it to relitigate issues he already included in his application for a certificate of appealability and that were rejected by the United States Court of Appeals for the Third Circuit.

Accordingly, the Motions will be denied and no certificate of appealability will be issued. An appropriate Order follows.

BY THE COURT:

/s/ Jeffrey L. Schmehl
JEFFREY L. SCHMEHL, J.