FILED: March 6, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7354
(5:03-cr-00004-KDB-DSC-8)
(5:08-cv-00041-KDB)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

RODERICK LAMAR WILLIAMS, a/k/a Rox

Defendant - Appellant

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7354

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

RODERICK LAMAR WILLIAMS, a/k/a Rox,

Defendant – Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Statesville. Kenneth D. Bell, District Judge. (5:03-cr-00004-KDB-DSC-8; 5:08-cv-00041-KDB)

Argued: October 25, 2022 Decided: January 3, 2023

Before GREGORY, Chief Judge, and WYNN and THACKER, Circuit Judges.

Affirmed by published opinion. Judge Wynn wrote the opinion, in which Chief Judge Gregory and Judge Thacker joined.

ARGUED: Jeffrey Michael Brandt, ROBINSON & BRANDT, PSC, Covington, Kentucky, for Appellant. Elizabeth Margaret Greenough, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee. **ON BRIEF:** William T. Stetzer, Acting United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

WYNN, Circuit Judge:

Roderick Lamar Williams filed a Federal Rule of Civil Procedure 60(b)(3) motion for relief from the district court's denial of his 28 U.S.C. § 2255 motion to vacate his conviction. The district court denied the Rule 60(b)(3) motion and Williams appealed. He argues that the district court erred in finding that his Rule 60(b)(3) motion, filed three and a half years after the district court's § 2255 order, was not entitled to equitable tolling. Because we conclude that Rule 60(b)(3)'s one-year time limit cannot be equitably tolled, we affirm the district court's decision.

I.

In 2003, the Government indicted Williams and several co-conspirators on drug and firearm charges. At trial in 2004, witnesses testified that Williams was a member of a drug-trafficking organization that operated in and out of North Carolina. Williams traveled frequently out of state and out of country to purchase large amounts of cocaine to bring back to North Carolina, where it was prepared, packaged, and distributed.

Andy Garcia Torres was one of Williams's drug suppliers. Garcia Torres testified that on July 25, 2002, he had a deal to sell cocaine to Williams and Williams's co-conspirator, Phillip Morrison, but that Williams and Morrison robbed Garcia Torres and his associates instead. As Williams and Morrison fled, an associate of Garcia Torres fired at the two men with a .9-millimeter handgun, striking both. Williams dropped a plastic bag containing some of the stolen cocaine. Officers testified that they recovered the bag and found a bloodstain on it, and they sent the bag to the North Carolina State Bureau of Investigation ("SBI") for testing.

In 2003, forensic analyst Brenda Bissette conducted a DNA analysis of the blood and later testified at trial that the profile of the bloodstain matched with Williams's profile. The blood evidence—and Bissette's involvement in testing it—form the central focus of Williams's legal challenge here.

In 2004, a jury found Williams guilty on all counts: conspiracy to possess with intent to distribute powder and crack cocaine, possession with intent to distribute powder cocaine, and two counts of possession of a firearm in furtherance of a drug-trafficking crime. The court sentenced Williams to a total effective sentence of life imprisonment plus 360 months, applying an enhancement because of his involvement in an uncharged homicide. This Court affirmed. *United States v. Williams*, 225 F. App'x 151 (4th Cir. 2007) (per curiam).

In May 2008, Williams filed a timely 28 U.S.C. § 2255 motion. He argued, as relevant here, that his trial counsel had been ineffective by failing to hire an independent expert to test the blood evidence. Over the ensuing years, he moved to supplement his § 2255 motion and to request additional discovery numerous times, arguing—among other issues—that the blood evidence was unreliable. He provided several reasons for this assertion: that an audit had revealed troubling cases at SBI from 1986 to 2002 where analysts withheld or distorted evidence, including cases involving Bissette; that Bissette had swapped DNA profiles between a victim and a suspect in an unrelated case during the same time period she analyzed evidence in Williams's case; and that Williams's newly hired expert believed the blood evidence may have been mishandled. In opposing these various motions, the Government argued that "there is no evidence that the blood stain was

tainted or that the evidence confirming that it was [Williams]'s blood on the bag was unreliable." J.A. 143.[1] On October 9, 2012, the district court denied Williams's § 2255 motion.

Nearly four years later, on July 5, 2016, Williams filed a Rule 60(b)(3) motion for relief from judgment, alleging that the Government had made several material misrepresentations during the original § 2255 proceedings that prevented him from fully and fairly presenting his case. He argued that the Government misrepresented that the DNA analysis was reliable, despite being aware of Bissette's misconduct. As proof of this alleged misconduct, Williams attached several documents from SBI regarding Bissette that he had obtained eight months earlier. The documents revealed a number of errors Bissette had committed during her time with SBI: in 1999, she misread a DNA sequence on a proficiency test; in 2002 and 2003, she twice mistakenly returned evidence by packaging it for the wrong case; and in 2003, she inadvertently switched tubes containing DNA standards from a victim and a suspect in another case, leading to an incorrect match.[2] Before the motion was ruled upon, the case was reassigned to a new judge.

[1] Citations to the "J.A." refer to the parties' Joint Appendix filed in this appeal.

[2] In 2010, Williams had alleged that Bissette "switched the known DNA sample profiles" of a suspect and victim in July 2003. District Ct. Dkt. No. 54-3. He identified the suspect in the case by name, Leslie Lincoln, as well as other factual details, such as how the mistake was discovered by court order and that Bissette had retired during a subsequent inquiry. Likewise, his expert also mentioned the DNA switch in his report. It's unclear if they learned of this information from the news or some other source because neither Williams nor his expert provided any supporting documents. Then, five years later, Williams received internal SBI documents from an attorney, dated from 2005, that confirmed the switch-up. This was the evidence he relied on for his Rule 60(b)(3) motion.

The district court construed Williams's motion as an unauthorized, successive § 2255 motion and dismissed it. This Court reversed, holding that Williams had filed a Rule 60(b)(3) motion, rather than an unauthorized § 2255 motion. *United States v. Williams*, 753 F. App'x 176, 177 (4th Cir. 2019) (per curiam). Moreover, because Rule 60(b)'s one-year time limit was an affirmative defense, rather than a jurisdictional bar, we held that Williams should have the opportunity to argue for his motion's timely filing below. *Id.* at 178. On remand, the case was once again reassigned to a new judge. The parties briefed the timeliness issue, with the Government asserting the one-year time limit as a defense, and the district court again denied Williams's motion. The court held that Williams's motion had been untimely filed beyond Rule 60(b)'s one-year deadline, that he was not entitled to tolling, and that his motion failed on the merits as well. Williams appealed.

In 2022, Williams's sentence was reduced twice—first pursuant to the First Step Act and then based on Williams's motion for a reduction of his sentence under 18 U.S.C. § 3582(c)(1). His effective sentence is now 360 months of imprisonment for two counts, to be served concurrently, followed by two consecutive 60-month sentences of imprisonment for two other counts.

II.

The questions Williams put before us in this appeal are whether he is entitled to equitable tolling for his Rule 60(b)(3) motion, and if so, whether he succeeds on the merits of his claim. While we are concerned by the Government's representations during Williams's original § 2255 proceedings, we cannot answer either question on appeal,

because upon our de novo review of this issue of law, *see Rouse v. Lee*, 339 F.3d 238, 248 (4th Cir. 2003) (en banc), we hold that Rule 60(b)(3)'s one-year time limit is a mandatory claim-processing rule that cannot be tolled.[3]

Under Rule 60, a court may provide relief from an order or judgment for six categories of enumerated reasons. Fed. R. Civ. P. 60(b)(1)–(6). One such category is relief because of "fraud . . . , misrepresentation, or misconduct by an opposing party." Fed. R. Civ. P. 60(b)(3). All Rule 60 motions must be filed "within a reasonable time." Fed. R. Civ. P. 60(c)(1). But for three categories of Rule 60(b) motions—including a motion based on fraud or misrepresentation under Rule 60(b)(3)—the Rule specifies that they must be filed "no more than a year after the entry of the judgment or order or the date of the proceeding." *Id.* To be sure, the one-year limit is an *outer* limit of what may be timely; indeed, we have found a delay of only three and a half months unreasonably long for a Rule 60(b)(3) motion where there was "no valid reason [] given for the delay." *McLawhorn v. John W. Daniel & Co.*, 924 F.2d 535, 538 (4th Cir. 1991).

As we have previously recognized, "this one year limit balances the competing interests of relieving an aggrieved party from the hardships of an unjustly procured decision

[3] This Court has not yet granted a certificate of appealability ("COA") in this case. And we need not do so here, where we affirm the denial of Williams's Rule 60(b)(3) motion only on timeliness grounds, which are not "sufficiently connected to the merits of the underlying habeas proceeding" to require a COA. *United States v. McRae*, 793 F.3d 392, 399–400 (4th Cir. 2015) (holding that no COA is required for the appeal of a dismissal of a Rule 60(b) motion on jurisdictional grounds); *see also Harbison v. Bell*, 556 U.S. 180, 183 (2009) (ruling that COA requirement only "governs final orders that dispose of the merits of a habeas corpus proceeding").

against the deep '[r]espect for the finality of judgments . . . engrained in our legal system.'" *Fox ex rel. Fox v. Elk Run Coal Co.*, 739 F.3d 131, 135 (4th Cir. 2014) (quoting *Great Coastal Express, Inc. v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am.*, 675 F.2d 1349, 1354 (4th Cir. 1982)). Accordingly, "the Rule suggests that equitable considerations prevail in such cases for one year [but] the interest in finality . . . prevails thereafter." *Great Coastal Express*, 675 F.2d at 1355.

Williams filed his motion pursuant to Rule 60(b)(3), based on the Government's alleged misrepresentations during his habeas proceedings. There is no question that he filed his motion more than three and a half years after the district court denied his § 2255 motion, i.e., more than two and a half years after the one-year time limit expired. Nonetheless, he argues that the Rule 60(b)(3) time limit should be equitably tolled based on the extraordinary circumstances of his case. The Government argues that the time limit in Rule 60(b)(3) is a mandatory claim-processing rule that cannot be tolled when it is properly invoked.

The issue of whether Rule 60(b)(3)'s time limit is a mandatory claim-processing rule is one of first impression before this Court. We ventured the furthest on the issue in *United States v. McRae*, where we clarified that Rule 60(b)'s time limit "is an affirmative defense, not a jurisdictional bar." 793 F.3d at 401 (citation omitted). But that does not answer the question presented here; *McRae* only makes clear that a party may forfeit the

timeliness defense by not properly raising it. *See id.* Here, of course, the Government made no waiver; it argued below that Williams's motion was untimely filed.[4]

And simply because Rule 60(b)'s time limit is not jurisdictional does not mean that a court may dispense with it, even for good cause. "The mere fact that a time limit lacks jurisdictional force . . . does not render it malleable in every respect." *Nutraceutical Corp. v. Lambert*, 139 S. Ct. 710, 714 (2019). "Some claim-processing rules are 'mandatory'" and therefore "unalterable if properly raised by an opposing party." *United States v. Marsh*, 944 F.3d 524, 529 (4th Cir. 2019) (quoting *Lambert*, 139 S. Ct. at 714). For such rules, even equitable tolling cannot be applied to "forgive a late filing." *Id.* at 530.

The Supreme Court and this Court have recently examined which claim-processing rules are mandatory and therefore preclude an equitable approach. First, in *Nutraceutical Corp. v. Lambert*, the Supreme Court held that Federal Rule of Civil Procedure 23(f)'s 14-day appeal deadline was mandatory and not subject to equitable tolling. 139 S. Ct. at 714–15. Then in *United States v. Marsh*, we likewise held that Federal Rule of Appellate Procedure 4(b)'s 14-day criminal appeal deadline was also mandatory and could not be tolled. 944 F.3d at 531. The "key," we explained in *Marsh*, was in the text of the rule and

[4] Williams asks that we consider waived the Government's argument that Rule 60(b)'s time limit is a mandatory claim-processing rule, because before the district court, the Government only argued that Williams's motion was untimely filed, not that equitable tolling was inapplicable to Rule 60(b). But as Williams concedes in his brief, we may affirm on any ground supported by the record. *United States v. McHan*, 386 F.3d 620, 623 (4th Cir. 2004). And, importantly, while the Government *could* have waived its timeliness argument by failing to raise it below, as noted, the Government clearly asserted that defense as required by *McRae*. *See* 793 F.3d at 401.

whether it "leaves room for such flexibility." *Id.* at 530 (quoting *Lambert*, 139 S. Ct. at 714). Drawing from *Lambert*, we explained that the mere fact that a procedural "rule is 'phrased in an unqualified manner' . . . is not enough to show that it is mandatory." *Id.* (quoting *Lambert*, 139 S. Ct. at 715). But the rule's relationship with other rules could "speak directly to the issue of [the claim-processing rule]'s flexibility." *Id.* (quoting *Lambert*, 139 S. Ct. at 715).

The facts of both cases help illustrate the proper analysis. In *Marsh*, we considered Federal Rule of Appellate Procedure 4(b), which requires a criminal defendant to file a notice of appeal "within 14 days" of the entry of judgment or order appealed from. Fed. R. App. P. 4(b)(1)(A). That time limit alone did not prove the rule was inflexible. *See Marsh*, 944 F.3d at 530. But critically, another rule's treatment of Rule 4(b) did. *See id.* Federal Rule of Appellate Procedure 26 governs the various deadlines for filings in the courts of appeals and gives courts broad discretion to "extend the time prescribed by these rules." Fed. R. App. P. 26(b). Yet Rule 26 expressly excepts Rule 4(b) notices of appeal from a court's discretion, explaining that "a court *may not extend* the time to file [] a notice of appeal (except as authorized in Rule 4)." Fed. R. App. P. 26(b)(1) (emphasis added). And, while Rule 4 allows for a potential extension, that extension is "not to exceed 30 days." Fed. R. App. P. 4(b)(4). "The upshot, then, is a maximum period of 44 days after judgment in which to file a criminal appeal under Rule 4(b)." *Marsh*, 944 F.3d at 531.

Likewise, in *Lambert*, the Supreme Court found that Federal Rule of Civil Procedure 23(f)'s 14-day deadline for filing an appeal from a grant or denial of class certification was also inflexible. Like Rule 4(b), Rule 23(f) was also excepted from a

court's general discretion to extend deadlines under Rule 26(b). *Lambert*, 139 S. Ct. at 715. Under Rule 26, once again, a court can generally grant extensions of time, but it cannot extend the time to file a notice of appeal, except in certain scenarios, which don't include Rule 23. *See* Fed. R. App. P. 26(b)(1)–(2). Thus, in both cases, Rule 26's relationship with the claim-processing rule at issue indicated no flexibility. The *Lambert* Court concluded that "[t]he Rules . . . express a clear intent to compel rigorous enforcement" of the claim-processing rule, "even where good cause for equitable tolling might otherwise exist." *Lambert*, 139 S. Ct. at 715.

Marsh, for its part, presented particularly compelling reasons for granting equitable tolling to the notice-of-appeal deadline. In that case, Marsh pleaded guilty to several charges, and at sentencing, the district court failed to advise Marsh of his right to appeal his sentence. *Marsh*, 944 F.3d at 527. This was a clear violation of Federal Rule of Criminal Procedure 32, which requires that the court "advise the defendant of any right to appeal the sentence." Fed. R. Crim. P. 32(j)(1)(B). Because of the error, Marsh filed his *pro se* appeal 283 days after the entry of judgment—well after the 14-day time limit. *Marsh*, 944 F.3d at 527. But even with the "gravity of the stakes" of a criminal appeal, this Court could not excuse a late filing. *Id.* at 531. "When the 'rules invoked'—whether criminal or civil—'show a clear intent to preclude tolling, courts are without authority to make exceptions'—even in cases where a litigant may have been 'reasonably mistaken, or otherwise deserving.'" *Id.* (quoting *Lambert*, 139 S. Ct. at 714).

Rule 60(b)(3)'s time limit operates similarly to the deadlines in *Marsh* and *Lambert*. As explained above, Rule 60(c)(1) expressly sets a one-year outer time limit for motions

brought under subsections (b)(1)–(3), including motions based on fraud or misrepresentation.

Critically, Rule 60(b)(3), just like Rule 4(b) in *Marsh* and Rule 23(f) in *Lambert*, is singled out by another rule for inflexible treatment. Federal Rule of Civil Procedure 6 governs computing time periods for filings and provides a court discretion to extend those periods. *See* Fed. R. Civ. P. 6(b)(1). Although a court generally may extend time limits upon a showing of "good cause" under Rule 6, that Rule explicitly prohibits a court from extending the time to act under Rule 60(b): "A court must not extend the time to act under Rule[] . . . 60(b)." Fed. R. Civ. P. 6(b)(2). Because Rule 6 singles out Rule 60(b) for inflexible treatment, it expresses a "clear intent to compel rigorous enforcement" of Rule 60(b)'s one-year outer time limit for claims brought pursuant to Rule 60(b)(1)–(3). *Lambert*, 139 S. Ct. at 715. Based on the principles laid out in *Lambert* and *Marsh*, we find this treatment of Rule 60(b) dispositive, leaving us without discretion to extend Rule 60(b)'s one-year time limit for equitable reasons, whatever their merit.

We are not alone in reaching this conclusion. In fact, all other circuit courts that have considered this issue have also concluded that Rule 60(b)'s one-year time limit is mandatory. *See Warren v. Garvin*, 219 F.3d 111, 114 (2d Cir. 2000) (stating that Rule 60(b)'s time limit is "absolute" (citation omitted)); *In re G.A.D., Inc.*, 340 F.3d 331, 334 (6th Cir. 2003) ("Regardless of circumstances, no court can consider a motion brought under Rule 60(b)(1), (2), or (3) a year after judgment."); *In re Cook Med., Inc*, 27 F.4th 539, 543 (7th Cir. 2022) (refusing to allow an extension of Rule 60(b)'s one-year time limit for equitable reasons "[n]o matter the potential merits of the plaintiffs' excusable neglect

arguments," because it was a mandatory claim-processing rule); *In re Rumsey Land Co., LLC*, 944 F.3d 1259, 1277 (10th Cir. 2019) (stating that Rule 60(b)'s time limit is absolute and "not subject to tolling").

Nor can we find relief for Williams elsewhere. True, Rule 60(b)(6)—which is not subject to the one-year outer time limit—permits district courts to grant relief for "any other reason that justifies" such relief. Fed. R. Civ. P. 60(b)(6). But as the Supreme Court has explained, the grounds for Rule 60(b)(6) are "mutually exclusive" from the grounds of other Rule 60(b) motions, thus prohibiting parties who "failed to take timely action" on one ground from "resorting to subsection (6)" to avoid the one-year limit. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 393 (1993); *see also Kemp v. United States*, 596 U.S. __, __, 142 S. Ct. 1856, 1861 (2022) ("This last option is available only when Rules 60(b)(1) through (b)(5) are inapplicable."). As such, Rule 60(b)(6) is available only in "extraordinary circumstances." *Aikens v. Ingram*, 652 F.3d 496, 500 (4th Cir. 2011) (en banc).

And in any event, Williams did not argue for relief under Rule 60(b)(6), either before the district court or on appeal.[5] This forfeiture would generally end our review, *see Greenlaw v. United States*, 554 U.S. 237, 243–44 (2008), though we sometimes depart

[5] Indeed, Williams originally filed a Rule 60(b)(6) motion raising separate issues. The district court denied it at the same time it denied his Rule 60(b)(3) motion, construing both as unauthorized, successive § 2255 motions. But he did not challenge the Rule 60(b)(6) ruling on his first appeal before us, and this Court held that he forfeited appellate review of that issue and affirmed that part of the district court's order. *Williams*, 753 F. App'x at 177.

from the strict application of such rules "to protect a *pro se* litigant's rights," *see id.* at 244. But while Williams appeared *pro se* before the district court, he has been represented by counsel on appeal. Thus, we consider any such argument forfeited here.

III.

As in the criminal proceeding in *Marsh*, we recognize the gravity of the stakes in habeas proceedings. Yet we do not believe that equitable tolling can apply to motions brought under Rule 60(b)(3). And because Williams filed his motion more than three and a half years after the applicable district court order, the court correctly held that his motion was untimely filed. For the foregoing reasons, we affirm the district court's denial of Williams's Rule 60(b)(3) motion.

AFFIRMED

FILED: January 3, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-7354
(5:03-cr-00004-KDB-DSC-8)
(5:08-cv-00041-KDB)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

RODERICK LAMAR WILLIAMS, a/k/a Rox

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

OFFICE OF STAFF COUNSEL
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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February 2, 2021

Mr. Jeffrey M. Brandt
Robinson & Brandt, P.S.C.
629 Main Street, Suite B
Covington, KY 41011

Re: No. 19-7354, *United States v. Williams*

Dear Mr. Brandt:

Thank you for agreeing to be appointed as counsel on behalf of the appellant in this appeal.

The issue of particular interest to the Court is:

POSTCONVICTION: Whether the district court abused its discretion in dismissing Defendant's Fed. R. Civ. P. 60(b)(3) motion as time-barred.

This appointment is made pursuant to the Criminal Justice Act, and the maximum authorized compensation is $2600 plus expenses. An hourly rate of $155 applies to both in-court and out-of-court work. Any compensation issues should be addressed to Deputy Clerk Patty Layne at (804) 916-2700.

The case manager assigned to this appeal, Jen Rice, will assist you with any procedural inquiries; she also can be reached at (804) 916-2700. Please contact me at (804) 916-2900 for any other assistance.

You will be notified as to the briefing schedule promptly after it is established by the Clerk's Office. The electronic record on appeal is available on PACER. Your appointment to this case as a member of this Court's Discretionary Panel authorizes you to obtain and use a fee exempt CJA Panel Attorney account to provide representation in this case.

We appreciate your assistance to the Court in accepting this appointment.

Very truly yours,

Melissa L. Wood

Melissa L. Wood
Senior Staff Counsel

MLW/cln

cc: Roderick Lamar Williams
Amy Elizabeth Ray, Assistant United States Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:08-cv-41-KDB
5:03-cr-4-KDB-DSC-8

RODERICK LAMAR WILLIAMS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	**ORDER**
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	
	)	

THIS MATTER is before the Court on remand from the Fourth Circuit Court of Appeals for further proceedings on Petitioner's Rule 60(b)(3) Motions, (Doc. Nos. 92, 94, 96). Also pending is Petitioner's Motion to Correct Clerical Mistake and Clarify Record, (Doc. No. 109).

I. BACKGROUND

Petitioner was charged in the underlying criminal case with a number of counts pertaining to a drug trafficking conspiracy and firearms offenses. At trial, "[s]everal witnesses, including co-conspirators and Government agents, attested to Williams' trips out-of-state and out-of-the-country with others to purchase large amounts of cocaine and cocaine base and transport it back to North Carolina where it was prepared, packaged, and distributed. Williams was identified as a member of "The Cream Team," an established narcotics trafficking organization operating in and out of North Carolina. A number of such witnesses also testified that Williams often carried a firearm on or immediately near his person while he conducted drug transactions…." United States v. Williams , 225 Fed. Appx. 151, 155 (4th Cir. 2007).

One of the many trial witnesses was Andy Garcia Torres (a/k/a Jorge Ortiz-Rojas) who

was one of Petitioner's drug suppliers. Garcia Torres testified about an incident on July 25, 2002 when Petitioner and one of the co-defendants, Phillip Tyrone Morrison, robbed Garcia Torres of cocaine. Garcia Torres described the incident in detail and testified that gunshots were fired as Petitioner and Morrison fled into the street, striking Petitioner's upper body and causing him to drop a plastic bag containing some of the stolen cocaine. (Doc. No. 115-1 at 38-39). Officers who responded to the shooting recovered a bag of cocaine in the street that had an apparent bloodstain. See (5:03-cr-4, Doc. No. 690 at 8-9, 196); (Id., Doc. No. 691 at 3). Special Agent Brenda Bissette of the North Carolina State Bureau of Investigation ("SBI") testified that she conducted a DNA analysis on the blood stain from the bag and Petitioner's standard DNA profile, and that the two profiles matched. (5:03-cr-4, Doc. No. 691 at 100 *et seq.*). Special Agent Susie Barker of the SBI testified about her involvement in the case that included preparing blood swabs for analysis. (Id., Doc. No. 691 at 89).

The jury found Petitioner guilty of conspiracy with intent to distribute at least five kilograms of cocaine and at least fifty kilograms of cocaine base, possession of at least 500 grams of cocaine with intent to distribute and aiding and abetting, and two counts of possession of a firearm during and in furtherance of a drug trafficking crime and aiding and abetting. (5:03-cr-4, Doc. Nos. 340, 364). The Court sentenced him to life imprisonment. (5:03-cr-4, Doc. No. 641). The Fourth Circuit Court of Appeals affirmed his convictions and sentences on direct appeal. United States v. Williams, 225 Fed. Appx. 151, 154 (4th Cir. 2007). The United States Supreme Court denied certiorari. Williams v. United States, 550 U.S. 978 (2007).

On May 19, 2008, Petitioner filed a § 2255 Motion to Vacate in the instant case raising multiple claims of ineffective assistance of trial and appellate counsel. (Doc. No. 1). The Court denied the petition on the merits on October 9, 2012, Williams v. United States, 2012 WL 4804898

(W.D.N.C. Oct. 9, 2012), and the Fourth Circuit dismissed Petitioner's appeal, United States v. Williams, 527 Fed. Appx. 261 (4th Cir. June 10, 2013).

On June 15, 2016, Petitioner filed the first in a series of Motions seeking relief from the October 9, 2012 judgment pursuant to Rule 60(b)(3) of the Federal Rules of Civil Procedure.[1] (Doc. No. 92). Petitioner argued, *inter alia*, that newly discovered evidence of DNA testing errors by the SBI crime lab required an evidentiary hearing. On May 17, 2018, the Court found that the Rule 60(b)(3) Motions are unauthorized second or successive § 2255 petitions and dismissed for lack of jurisdiction. (Doc. No. 98). Petitioner filed a Rule 59(e) Motion for Reconsideration that was denied. (Doc. Nos. 99, 100).

The Fourth Circuit remanded for further consideration of Petitioner's claims for relief under Rule 60(b)(3) and noted that Petitioner should be granted the opportunity to address whether his Rule 60(b)(3) Motion was timely filed.[2] United States v. Williams, 753 Fed. Appx. 176 (4th Cir. 2019).

Petitioner has filed a Memorandum Addressing Limitations, (Doc. No. 110), arguing that extraordinary circumstances warrant equitable tolling and that "deliberate prosecutorial misconduct" prevented him from timely seeking Rule 60(b)(3) relief. (Doc. No. 110 at 2). Petitioner asserts that, in "late 2009," he made a FOIA request to the Executive Office for United States Attorneys ("EOUSA") seeking "all discoverable material associated with the North Carolina S.B.I. involvement with Petitioner's criminal cases." (Doc. No. 110 at 4). On May 21, 2010, EOUSA released only three documents pertaining to the SBI's examination of drugs seized during

[1] Petitioner's Rule 60(b)(6) Motion, (Doc. No. 91), has been omitted from this discussion because Petitioner did not appeal the dismissal of his Rule 60(b)(6) Motion as an unauthorized successive § 2255 petition. United States v. Williams, 753 Fed. Appx. 176, 177 (4th Cir. 2019).

[2] The Fourth Circuit declined to consider the denial of Petitioner's Rule 59(e) motion for reconsideration of the denial of Rule 60(b) relief.

a 1996 arrest in Forsyth County. Petitioner's appeal for additional documents was denied on August 12, 2010. Petitioner then directly contacted SBI with FOIA requests about Brenda Bissette's misconduct. The SBI responded on December 22 and 28, 2010 by refusing to release any detailed information and denied the existence of such misconduct. Petitioner continued to seek information by contacting attorney Mike Klinkosum, who declined further representation based on a conflict of interests. (Doc. No. 110 at 5).

After the Court denied Petitioner's initial § 2255 petition on October 9, 2012, Petitioner was referred to another lawyer, Heather Rattlade, who provided him with "very important documents that were wrongfully withheld by the government" which Petitioner received shortly after October 24, 2015. (Doc. No. 110 at 6-7).

Petitioner argues that, as a *pro se* litigant, he faced an "insurmountable obstacle" dating back to 2010 when the SBI wrongfully withheld documents. He exercised due diligence by seeking the documents from state and federal agencies. "Working in unison, these agencies craftly impeded Petitioner from recovering pivotal material evidence; even going as far as falsely asserting 'evidence of SA Bisette's misconduct did not exist.'" (Doc. No. 110 at 8). Petitioner also alleges that he faced an "ethical obligation imposed on attorneys, not being able to provide withheld information to defendants whom were wrongfully convicted." (Doc. No. 110 at 8-9). At every stage of the proceedings, the prosecution has maintained the "unconscionable scheme to subvert the judicial process, thus, preventing Petitioner from having claim fully and fairly determined." (Doc. No. 110 at 10). The documented events and dates in the newly discovered SBI documents detailing Bissette's misconduct and the SBI's "concession" "depict[] the prosecutor's purposeful intent with deceiving the district court." (Doc. No. 110 at 14); see (Doc. No. 92-2 at 5-23).

Petitioner identifies allegedly intentional misrepresentations of material fact by the

Government in the instant proceedings that bolstered the Government's opposition to Petitioner's constitutional claim despite having "informed knowledge and possession of pivotal material evidence, which substantiated Petitioner's defense." (Doc. No. 110 at 14). He argues, *inter alia*: (1) the prosecutor attested to the lack of evidence suggesting that there had been any reported problems at SBI that would render SBI's DNA testing deficient or inaccurate (Doc. No. 57 at 8) (Government's Response in Opposition to Petitioner's Motions to Supplement § 2255 Motion to Vacate); (2) the prosecutor attested to the lack of evidence suggesting that someone tampered with the plastic bag between the time of recovery and time of testing, that Petitioner was unable to prove Strickland's prejudice prong because he produced no evidence that it was not his blood on the plastic bag or that the way it was handled somehow tainted it, or that the evidence confirming it was Petitioner's blood on the bag was unreliable (Doc. No. 58 at 7) (Government's Response in Opposition to Petitioner's Amended Claims); and (3) the prosecutor stated that Petitioner has not explained why the evidence could not have been produced earlier and therefore has not shown excusable neglect for failing to present the evidence in opposition to the Government's Motion for Summary Judgment within the time allotted under Rule 56(e) (Doc. No. 57 at 6) (Government's Response in Opposition to Petitioner's Motions to Supplement § 2255 Motion to Vacate).

According to Petitioner, his Rule 60(b)(3) motion was timely filed within one year of October 24, 2015, when Ms. Rattlade provided him with documents that formed the factual predicate for Rule 60(b)(3) relief. (Doc. No. 110 at 9). He argues that this withholding of evidence and purposeful misconduct prevented him from seeking Rule 60(b)(3) relief sooner and prevented him from having a full and fair § 2255 proceeding because the Court relied on the Government's misrepresentations in denying § 2255 relief. Petitioner argues that the foregoing constituted exceptional circumstances beyond his control that prevented the timely filing of the Rule 60(b)(3)

motion and warrants the application of equitable tolling, and prevented him from having a fair and full opportunity to present his claims and subverted the judicial process. As a result of the foregoing, Petitioner argues, the jury and the Court concluded that Agent Bissette's testimony was credible and reliable and that the information provided by Petitioner ultimately had no impact on the strength of the blood evidence presented at trial, and that relief was not warranted on § 2255 review. (Doc. No. 76 at 17-18, n.4).

The Government filed a Response, (Doc. No. 113), arguing that the Rule 60(b)(3) Motions are untimely and Petitioner has not identified any conduct by the United States that warrants the extraordinary relief he requests. Petitioner's equitable tolling argument should be rejected because Petitioner has not presented any evidence that an extraordinary circumstance kept him from filing 60(b)(3) within a year, or that gross injustice would result from enforcing the rule's one-year time limit. Petitioner has not shown any effort by state or local authorities to hinder his ability to obtain information about misconduct by Agent Bissette, that state and federal authorities engaged in a scheme to hide material evidence from him and the Court, that the SBI's response was inaccurate or incomplete, that the United States was aware at any time before he filed the Rule 60(b)(3) that Agent Bissette had made a discrete DNA-analysis error in August 2003 or two other mistakes in handling DNA evidence unrelated to Petitioner's case, or that federal authorities acted to thwart Petitioner's effort to obtain records about Agent Bissette's employment with the SBI crime lab. Rather, the evidence shows that the state authorities limited the information that they disclosed to Petitioner pursuant to state law,[3] and there is no evidence that extraordinary circumstances

[3] North Carolina General Statutes Section 126-23 applies to State agency employee records including disciplinary records, and states that, "persons in the custody of, or under supervision of, the Division of Adult Correction … are not entitled to access to the records made public under this section and are prohibited from obtaining those records, absent a court order authorizing access to, or custody, or possession." N.C.G.S. § 126-23 (d) (2017).

hindered his ability to obtain earlier the evidence he got in 2015.

Even if extraordinary circumstances exist, the Government argues that there is no basis to conclude that a gross injustice would result from the denial of Petitioner's opportunity to present his Rule 60(b)(3) claim. There is no evidence that federal or state authorities committed any fraud or made any material misrepresentations that might have altered the Court's resolution of the § 2255 petition, the evidence upon which Petitioner relies is impeachment evidence rather than evidence of factual innocence of the 2002 robbery, and the evidence of his guilt was strong. Even if the jury heard that Agent Bissette had previously switched blood samples from a suspect and victim in a different case, there is no reasonable likelihood that the jury would have assumed she made the same error in Petitioner's case and would have acquitted him of the 924(c) charge.

The Government argues alternatively that the Rule 60(b)(3) Motion should be denied because Petitioner has not shown extraordinary circumstances warranting the reopening of the Court's final judgment. No extraordinary circumstances are present because Petitioner has not identified a single misrepresentation or presented any evidence that the Court's judgment was the result of misleading advocacy by the United States.

The Government argues that the statements it has made in the instant proceedings are not misrepresentations and do not warrant Rule 60(b)(3) relief. It argues that, when the Government opposed Petitioner's motions to supplement the § 2255 petition, its statement that Petitioner had not explained why three of the four documents he presented could not have been presented earlier was accurate. Petitioner had not explained why most of the evidence he submitted could not have been presented earlier and it was fair to argue that the evidence, including a pretrial services violation report from 2000, the summary of an investigation into Petitioner's prior incarcerations, and a forensic DNA analyst's report about the handling of Petitioner's blood sample, could have

been presented and developed earlier. The Government's attestation to the lack of evidence suggesting that there had been any reported DNA testing problems at SBI rendering the SBI's DNA testing deficient or inaccurate, (Doc. No. 57 at 8), is an accurate statement. The newspaper article at issue is primarily about the change in leadership at SBI and concern about bloodstain pattern analysts. See (Doc. No. 53-1 at 3). The article was explicitly not about more concrete forensic science such as DNA. The Government's statement that there was no evidence suggesting that anyone tampered with the plastic bag on which Petitioner's blood was found, that the blood stain was tainted, or that there was no evidence that the DNA analysis was unreliable, are accurate statements. The response was filed before Petitioner presented any evidence that Agent Bissette mistakenly switched samples in 2003 or returned evidence to the wrong law enforcement agency in 2002, and the United States was not aware of that evidence. Even if the United States had been aware of that evidence, its statement that there was no evidence that the analysis of blood on the plastic bag was unreliable is accurate. Petitioner still has not presented such evidence, and testimony from trial witnesses Ortiz and Muhammad corroborated it. Further, the allegation that the United States committed egregious misconduct is not supported by any evidence that the United States misled the Court or committed any fraud or misconduct in its § 2255 litigation. There is overwhelming evidence that Petitioner violated § 924(c) with regards to the July 25, 2002 robbery. Nothing Petitioner has presented since the Court ruled on the § 2255 petition suggests that those proceedings were incorrectly decided.

Petitioner filed a Reply, (Doc. No. 114), again arguing that extraordinary circumstances warrant equitable tolling and that deliberate prosecutorial misconduct prevented Petitioner from having a fair and full opportunity to present his constitutional claim, so the original § 2255 proceedings should be reopened. He argues that the SBI's statement in 2010 that no documents

exist that could be forwarded to Petitioner is false, and contrary to the newly discovered classified SBI documents that the SBI had publicly informed others in the state government as early as May 2005 of Agent Bissette's errors dating back to 1999. The Government's attempt to deny that it had any such knowledge of material evidence should be rejected because the SBI and Agent Bissette were "in a real sense members of the prosecution team." (Doc. No. 114 at 2). The state and federal governments both bear this burden equally because they pooled their investigative energies to prosecute Petitioner. Police are part of the prosecution and the taint on the trial is no less real if they, rather than the state attorney's office, was guilty of the non-disclosure. The United States' suggestion that it did not make misrepresentations of material facts, (Doc. No. 57), is a continued effort to maintain its "unconscionable scheme to subvert the judicial process." (Doc. No. 114 at 3). Petitioner presented media coverage that the blood analysis by SBI put the reliability of Agent Bissette's test results squarely before the district court. The Government used its advantage of having domain and control of material evidence to oppose Petitioner's constitutional claim. The United States knew that the SBI, a member of the prosecution team would not provide Petitioner with necessary material evidence to question the plausibility of Agent Bissette's test results. This egregious misconduct directly influenced the Court's reasoning to conclude that Petitioner had a fair and full opportunity to present his claim. (Doc. No. 76 at 5).

Petitioner argues that the Government's denials about Petitioner's amended § 2255 grounds fail because the Government knew that the SBI, a member of the prosecution, would not provide Petitioner with the necessary material evidence that is before the district court regarding Agent Bissette's DNA test results. These results would have provided Petitioner with "pivotal material evidence of Bissette having possession of blood evidence in this case, while she deliberately fabricated dna results in a different case. Therefore; supplying direct evidence that Bissette's dna

analysis were in fact unreliable and untrustworthy." (Doc. No. 114 at 4). Despite having "implicit knowledge" of Bissette's DNA misconduct and the SBI concession, the Government bolstered its opposition by arguing the opposite, "a fact the government knew was false, which deceived the district court." (Doc. No. 114 at 4). The Government's egregious misconduct directly influenced the Court's decision as it relied on Agent Bissette's DNA test results to support its finding of overwhelming evidence. (Doc. No. 114 at 4). The prosecutor's egregious misconduct warrants equitable tolling and Rule 60(b)(3) relief because it directly subverted the judicial process, deceived the district Court and deprived Petitioner of a full and fair opportunity to present his constitutional claims.

The matter is now ripe for disposition.

II. MOTION TO CORRECT

Petitioner filed a Motion to Correct Clerical Mistake and Clarify Record, (Doc. No. 109), in which he argues that his Addendum in Support of his Rule 60(b)(3) Motion, (Doc. No. 94), was erroneously docketed as a Motion to Reopen. He claims that this error resulted in the Second Addendum, (Doc. No. 97), not being addressed and therefore omitting from consideration a third perpetrated misrepresentation from the prosecutor during the course of the initial 2255 proceedings." (Doc. No. 109 at 2). He asks that the Addendum be "properly identified" and that the Second Addendum be "properly acknowledged" as such. (Id.).

Petitioner's Motion will be denied as moot because, regardless of their titles, all of Petitioner's Motions and Memoranda pursuant to Rule 60(b)(3) have been liberally construed and considered by the Court regardless of their titles. See generally Haines v. Kerner, 404 U.S. 519 (1972) (a *pro se* complaint, however inartfully pled, must be held to less stringent standards than formal pleadings drafted by lawyers).

III. LEGAL STANDARD

Rule 60 permits a court to correct orders and provide relief from judgment under the following circumstances:

> (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(b) is an "extraordinary remedy" which sets aside "the sanctity of [a] final judgment." Compton v. Alton Steampship Co., Inc., 608 F.2d 96, 102 (4th Cir. 1979) (citation and internal quotation marks omitted). A court must balance the competing policies favoring the finality of judgments and justice being done in view of all the facts, to determine, within its discretion, whether relief is appropriate in each case. Compton, 608 F.2d at 102; Square Const. Co. v. Washington Metro. Area Transit Auth., 657 F.2d 68, 71 (4th Cir. 1981).

After "demonstrate[ing] the existence of a meritorious claim or defense," Compton, 608 F.2d at 102, the party seeking relief under Subsection 60(b)(3) must further "prove the misconduct complained of by clear and convincing evidence and demonstrate that such misconduct prevented him from fully and fairly presenting his claim or defense," Square Const. Co., 657 F.2d at 71; see McLawhorn v. John W. Daniel & Co., Inc., 924 F.2d 535, 538 (4th Cir. 1991).

Subsection (b)(6) of Rule 60 allows a court to grant Rule 60(b) relief for "any other reason justifying relief from the operation of the judgment." Fed. R. Civ. P. 60(b)(6). "[C]lause (6) and

the first five clauses are mutually exclusive and [ ] relief cannot be had under clause (6) if it would have been available under the earlier clauses." 11 C. Wright & A. Miller, Federal Practice and Procedure: Civil, § 2864 (1973). "[T]he language of the 'other reason' clause, for all reasons except the five particularly specified, vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." Klapprot v. United States, 335 U.S. 601, 614-15 (1949).

A Rule 60(b) motion must be made within a "reasonable time," and for reasons (1) through (3), "no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c). The party moving for relief from judgment under Rule 60(b) bears the burden of showing timeliness. Wells Fargo Bank, N.A. v. AMH Roman Two NC, LLC, 859 F.3d 295 (4th Cir. 2017). A movant must first show that he has moved in a timely fashion, that he has a meritorious defense to the judgment, that the opposing party would not be unfairly prejudiced by a set aside, and show exceptional circumstances. See Aikens v. Ingram, 652 F.3d 496, 501 (4th Cir. 2011); Werner v. Carbo, 731 F.2d 204, 206-07 (4th Cir. 1984) (citing Compton, 608 F.2d at 102).

A court can equitably toll limitations in "those rare instances where—due to circumstances external to the party's own conduct—it would be unconscionable to enforce the limitation against the party." Hill v. Braxton, 277 F.3d 701, 704 (4th Cir. 2002) (citing Harris v. Hutchinson, 209 F.3d 325, 330 (4th Cir. 2000)); United States v. Prescott, 221 F.3d 686, 688 (4th Cir. 2000)("§ 2255's limitation period is subject to equitable modifications such as tolling."). Traditional equitable tolling applies where a petitioner establishes "(1) he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." Holland v. Florida, 560 U.S 631, 649 (2010). Alternatively, the actual-innocence exception applies to a credible showing of actual innocence. See McQuiggin v. Perkins, 569 U.S. 383 (2013).

"Generally, a litigant seeking equitable tolling bears the burden of establishing two elements." Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005). The second prong of the equitable tolling test is met "only where the circumstances that caused a litigant's delay are both extraordinary *and* beyond its control." Menominee Indian Tribe of Wis. v. United States, 136 S.Ct. 750, 756 (2016). Under the Fourth Circuit's precedent, equitable tolling is appropriate in those "rare instances where – due to circumstances external to the party's own conduct – it would be unconscionable to enforce the limitations period against the party and gross injustice would result." Whiteside v. United States, 775 F.3d 180, 184 (4th Cir. 2014) (quoting Rouse v. Lee, 339 F.3d 238, 246 (4th Cir. 2003) (*en banc*)) (citations omitted). The fundamental miscarriage of justice exception is grounded in the equitable discretion of habeas courts to see that federal constitutional errors do not result in the incarceration of innocent persons, and requires a credible showing of actual innocence. McQuiggin, 569 U.S. at 392; Schlup v. Delo, 513 U.S. 298, 314-15 (1995); see generally Satterfield v. District Attn'y Philadelphia, 872 F.3d 152, 163 (3d Cir. 2017) (applying the actual innocence exception to a Rule 60(b)(6) motion).

IV. DISCUSSION

(1) Limitations

Liberally construing Petitioner's arguments, he appears to seek relief under Rule 60(b)(3) and/or Rule 60(b)(6).

As a preliminary matter, any reliance on Rule 60(b)(6) has been waived by Petitioner's failure to appeal the Court's denial of his Rule 60(b)(6) Motion. To the extent that Petitioner relies on Rule 60(b)(3), his Motions are time-barred. [4]

[4] Even if the Rule 60(b)(6) Motion was not waived, Petitioner would have had to demonstrate that the Rule 60(b)(6) Motion was filed within a reasonable time after the relevant judgment was issued, which he failed to do.

To the extent that Petitioner seeks relief under Rule 60(b)(3), his Motions are untimely. Motions under Rule 60(b)(3) must be made no more than a year after the entry of the judgment or order or the date of the proceeding. Fed. R. Civ. P. 60(c). Petitioner's Rule 60(b) Motions address the October 9, 2012 Order denying § 2255 relief. Petitioner filed the first in a series of Rule 60(b) Motions on June 15, 2016, well outside the one-year limit.

Assuming that equitable tolling applies to Rule 60(b) motions, equitable tolling is not warranted. Petitioner appears to rely on the actual innocence exception.[5] The evidence that Petitioner has filed in this case demonstrates that information was public by August 20, 2010, that an SBI audit had uncovered "troubling cases" including those involving Agent Bissette where the SBI withheld or distorted evidence. (Doc. No. 61-1 at 7). In December 2010, Petitioner learned that Bissette had retired and Barker was placed on administrative duty. (Doc. No. 61-1 at 17). Petitioner received, no later than September 2011, his full case reports dated July 28, 2011, which both refer to Bissette and Barker in the chains of custody and as analysts. (Doc. No. 74-2 at 14-29). Petitioner had his own comprehensive review of the laboratory records conducted, which revealed in January 2012 that there were not "any notable deviations from process or errors," (Doc. No. 72-2 at 5), and that reanalysis would detect whether there were any lab errors such as sample switch or contamination. Petitioner now claims that the documents he received on October 24, 2015 from Ms. Rattelade about Bissette are new evidence of prosecution fraud that prevented him from seeking Rule 60(b) relief sooner. The documents include Bissette's misreading of a gel scan test in 1999, two evidence mix-ups in 2003, and a sample switch in 2005 that resulted in her removal from casework and review of cases she handled between July 2003 and March 2005.

[5] To the extent that Petitioner relies on traditional equitable tolling, this also fails because he has not demonstrated that extraordinary circumstances exist that would make it unconscionable to enforce the statute of limitations and that gross injustice would result from doing so.

(Doc. No. 92-2 at 9- 22).

Petitioner already knew, prior to receiving evidence from Ms. Rattlade in 2015, that SBI had identified problems with Bissette and Barker and that both of those agents were involved in his case. He also knew that an independent examination of the laboratory notebooks showed no evidence of mistakes or irregularities, and that only a reanalysis of the evidence would be able to reveal whether mistakes or irregularities occurred.

The new evidence that Bissette made errors in other cases would have constituted impeachment evidence, but they fail to shed any new light on the legitimacy of the DNA analysis in Petitioner's case or on Petitioner's guilt. The foregoing does not support equitable tolling because the new evidence does not demonstrate Petitioner's factual innocence, but rather, would only have impeached the Government's witnesses.[6] See Calderon v. Thompson, 523 U.S. 538, 563 (1998) (impeachment evidence, which "is a step removed from evidence pertaining to the crime itself," "provides no basis for finding a miscarriage of justice"). In short, Petitioner has failed to demonstrate that extraordinary circumstances existed that prevented him from seeking Rule 60(b) relief sooner.

Petitioner has failed to carry his burden of demonstrating that equitable tolling applies, and therefore, Petitioner's Rule 60(b) Motions are time-barred.

(2) Merits

Even if the Rule 60(b) Motions were considered timely, they would fail on the merits.

Petitioner cannot satisfy Rule 60(b)(3) because he has not proved, by clear and convincing evidence, that fraud, misrepresentation, or misconduct prevented him from fully and fairly

[6] This claim would also fail on the merits if Petitioner has sought relief under Rule 60(b)(2) because he has not demonstrated that the new evidence was so material and controlling that the outcome would have been different.

presenting his claim. First, there is no clear and convincing evidence that the Government engaged in fraud, misrepresentation, or misconduct. The Government explains that SBI's responses to Plaintiff's *pro se* requests for information were restricted by the North Carolina statutes and that its own representations in the instant case were factually correct. See (Doc. No. 113). These assertions are supported by the record and Petitioner has failed to show, by clear and convincing evidence, that misrepresentations, fraud, or misconduct occurred.

Second, Petitioner has failed to demonstrate that fraud, misrepresentation, or misconduct prevented him from fairly presenting his claim. The Court has already set out the facts that Plaintiff knew, either because they were public or because they were disclosed to him, about errors in the SBI laboratory. The specific information that he obtained more recently does not invalidate the DNA results in his case or call his criminal conviction into question. The evidence of Bessette's past errors in other cases upon which Petitioner presently relies would have constituted impeachment. However, the evidence of his guilt aside from DNA evidence was strong, including testimony from drug supplier Garcia Torres that Petitioner robbed him of cocaine, was shot in the upper body as he fled, and dropped some of the stolen cocaine. (Doc. No. 115-1 at 38). Evidence about Bessette's errors in other cases would not have undermined the other strong evidence of Petitioner's guilt and would not have been material to the jury's verdict, or to the Court's denial of § 2255 relief. See McLawhorn v. John W. Daniel & Co., Inc., 924 F.2d 535 (4th Cir. 1991) (even if Rule 60(b) motion had been timely filed, it still would have been denied because no additional evidence concerning the records at issue would have changed the disposition of the summary judgment motion). Cf. Schultz v. Butcher, 24 F.3d 626 (4th Cir. 1994) (holding that new evidence does not have to be result-altering to warrant a new trial on a Rule 60(b)(3) motion). Balancing the competing policies favoring the finality of judgments and justice being done in view of all the

facts, the Court finds, in its discretion, that relief is not appropriate in this case.

It appears that Petitioner's claim is more accurately a claim of newly discovered evidence that should have been raised under Rule 60(b)(2). However, recharacterizing it as such would not benefit Petitioner. A party seeking relief under Rule 60(b)(2) must demonstrate that the "newly discovered evidence" was "of such a material and controlling as [would] probably [have] changed the outcome." Schultz, 24 F.3d at 631 (distinguishing Rule 60(b)(2) from 60(b)(3)) (alteration in original; internal quotation marks omitted). The evidence that Petitioner obtained in 2015 is merely impeaching and, for the reasons already stated, would not have changed the outcome of either the § 2255 proceedings or trial. Therefore, even if Petitioner had properly raised this claim under Rule 60(b)(2), it would fail on the merits. See U.S. Fidelity & Guaranty Co. v. Lawrenson, 334 F.2d 464, 466 (1964) (denial of a Rule 60(b) motion was not an abuse of discretion where the newly discovered evidence was "merely cumulative and offered for the purpose of impeaching…" a witness' testimony).

For all the foregoing reasons, the Rule 60(b) Motions would be denied on the merits even if they had been timely filed.

V. CONCLUSION

Petitioner's Motions seeking relief pursuant to Rule 60(b), (Doc. Nos. 92, 94, 96), are dismissed with prejudice and denied, and Petitioner's Motion to Correct Clerical Mistake and Clarify Record, (Doc. No. 109), is denied as moot.

IT IS, THEREFORE, ORDERED that

1. Petitioner's Rule 60(b) Motions, (Doc. Nos. 92, 94, 96), are **DISMISSED** with prejudice and **DENIED**.
2. Petitioner's Motion to Correct Clerical Mistake and Clarify Record, (Doc. No. 109), is

DENIED.

3. **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability. See 28 U.S.C. § 2253(c)(2); Miller–El v. Cockrell, 537 U.S. 322, 338 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 473, 484 (2000) (when relief is denied on procedural grounds, a petitioner must establish both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right); United States v. Ethridge, 664 Fed. Appx. 304 (4th Cir. 2016) (a defendant is required to obtain a COA to appeal the denial of a Rule 60(b) motion that is not recharacterized as a § 2255 petition).

Signed: September 9, 2019

Kenneth D. Bell
United States District Judge

United States District Court
Western District of North Carolina
Statesville Division

Roderick Lamar Williams,	)	JUDGMENT IN CASE
	)	
Petitioner(s),	)	5:08-cv-00041-KDB
	)	5:03-cr-00005-KDB-8
vs.	)	
	)	
USA,	)	
	)	
Respondent(s).		

DECISION BY COURT. This action having come before the Court and a decision having been rendered;

IT IS ORDERED AND ADJUDGED that Judgment is hereby entered in accordance with the Court's September 10, 2019 Order.

September 10, 2019

Frank G. Johns, Clerk
United States District Court