APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-1427

MARIJAN CVJETICANIN
Appellant

v.

UNITED STATES OF AMERICA

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, JORDAN, HARDIMAN, GREENAWAY, JR., KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, and FREEMAN, *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 M. Hardiman
Circuit Judge

Dated: March 29, 2023
ARR/cc: MC; MEC; JFR

APPENDIX B

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT
CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

TELEPHONE
215-597-2995

December 29, 2022

Mark E. Coyne
John F. Romano
Office of United States Attorney
970 Broad Street
Room 700
Newark, NJ 07102

Marijan Cvjeticanin
3338 72nd Street
3rd Floor
Jackson Heights, NY 11372

RE: Marijan Cvjeticanin v. USA
Case Number: 22-1427
District Court Case Number: 3-19-cv-00549

ENTRY OF JUDGMENT

Today, **December 29, 2022** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:
3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).
15 pages if hand or type written.

Attachments:
A copy of the panel's opinion and judgment only.
Certificate of service.
Certificate of compliance if petition is produced by a computer.
No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/ *Aina*, Legal Assistant
Direct Dial: 267-299-4957

ALD-050

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **22-1427**

MARIJAN CVJETICANIN, Appellant

VS.

UNITED STATES OF AMERICA

(D.N.J. Civ. No. 3-19-cv-00549)

Present: HARDIMAN, RESTREPO, and BIBAS, Circuit Judges

Submitted is Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1)

in the above-captioned case.

Respectfully,

Clerk

ORDER

The foregoing request for a certificate of appealability is denied. We may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The District Court denied Cvjeticanin's claims as previously litigated, procedurally defaulted, or meritless. Jurists of reason would not debate the District Court's decision. See Strickler v. Greene, 527 U.S. 263, 281-82 (1999) (describing elements of a claim based on Brady v. Maryland, 373 U.S. 83, 87 (1963)); Strickland v. Washington, 466 U.S. 668, 687-96 (1984) (describing standard for claims of ineffective assistance of counsel); United States v.

Cvjeticanin, 795 F. App'x 873 (3d Cir. 2019); United States v. Cvjeticanin, 704 F. App'x 89 (3d Cir. 2017).

By the Court,

s/ *Thomas M. Hardiman*
Circuit Judge

Dated: December 29, 2022
ARR/cc: MC; MEC; JFR

A True Copy:

Patricia A. Dodszuweit

Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MARIJAN CVJETICANIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil Action No. 19-549 (MAS)

MEMORANDUM ORDER

This matter comes before the Court on Petitioner's motion seeking reconsideration of the Court's order and opinion denying his motion to vacate sentence filed pursuant to Federal Rule of Civil Procedure 59(e). (ECF No. 30.) The scope of a motion brought pursuant to Rule 59(e) is extremely limited. *See Blystone v. Horn*, 664 F.3d 397, 415 (3d Cir. 2011). A Rule 59(e) motion may be employed "only to correct manifest errors of law or fact or to present newly discovered evidence." *Id.* "'Accordingly, a judgment may be altered or amended [only] if the party seeking reconsideration shows at least one of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [decided the motion], or (3) the need to correct a clear error of law or fact or to prevent manifest injustice.'" *Id.* (quoting *Howard Hess Dental Labs., Inc. v. Dentsply Int'l Inc.*, 602 F.2d 237, 251 (3d Cir. 2010)). In this context, manifest injustice "generally . . . means that the Court overlooked some dispositive factual or legal matter that was presented to it," or that a "direct, obvious, and observable" error occurred. *See Brown v. Zickefoose*, No. 11-3330, 2011 WL 5007829, at *2 n.3 (D.N.J. 2011).

In his motion, Petitioner first contends that this Court erred in deciding his motion to vacate sentence without considering his request to conduct further discovery. By way of background,

when Petitioner filed his motion to vacate sentence, he also filed a request to conduct additional discovery. (ECF No. 1-2.) In that request, Petitioner sought permission to conduct a fishing expedition for various materials including admissions or interviews with prior defense counsel and witnesses related to his former employer, requests for admissions from the Government to support his unsupported allegations of a grand conspiracy against him, the identities and addresses of trial jurors, grand jury minutes, and other pieces of information. (*Id.*) In February 2019, this Court informed Petitioner that his request would be taken under advisement and considered in due course as part of this Court's ultimate decision. (*See* ECF No. 2.) This Court did just that in reviewing and deciding Petitioner's motion. Although the Court did not, in its opinion, explicitly deny the motion, the Court did explicitly conclude that it had considered Petitioner's motion and found all of his claims to be either without merit or procedurally barred. The Court also indicated that no further hearings or other information beyond the current record was necessary for the Court to reject Petitioner's motion to vacate sentence. (ECF No. 29 at 5.) Although implicit rather than explicit, that was, in fact, a denial of Petitioner's discovery requests, which, although framed as documentary requests, were in large part requests to broadly question and interrogate witnesses as one would in an evidentiary hearing. As this Court rejected the need for further discovery, and found no hearing necessary to deny Petitioner's motion, this Court did not err in not explicitly rejecting Petitioner's requests for further discovery. *See, e.g., United States v. Noyes*, 589 F. App'x 51, 53 (3d Cir. 2015) (§ 2255 does not permit broad fishing expedition discovery requests and provides limited discovery only where good cause is shown and discovery is likely to provide a basis for relief). Petitioner's discovery related argument thus provides no valid basis for reconsideration.

In his remaining arguments, Petitioner attempts to relitigate a number of his claims which this Court either rejected as without merit – such as Petitioner's claim of actual innocence – or

found procedurally barred as they had either been previously raised and rejected on direct appeal or should have been raised on appeal. In so doing, Petitioner does little more than retread previous arguments that the Court already rejected and profess his profound disagreement with this Court's decision. Petitioner, however, fails to show any error in this Court's reasoning, or that he suffered a manifest injustice in light of this Court's rejection of his claims as either meritless or barred. Petitioner's mere disagreement with this Court's decision provides no valid basis for reconsideration. *Blystone*, 664 F.3d at 415. Petitioner's motion for reconsideration must therefore be denied.

IT IS THEREFORE on this 30th day of August, 2022, **ORDERED** that:

1. The Clerk of the Court shall reopen this matter for the purposes of this Order only;
2. Petitioner's motion for reconsideration (ECF No. 30) is **DENIED**; and
3. The Clerk of the Court shall serve a copy of this Order upon Petitioner electronically and by regular mail and upon the Government electronically, and shall **CLOSE** the file.

MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

APPENDIX D

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MARIJAN CVJETICANIN, Petitioner, v. UNITED STATES OF AMERICA, Respondent.	Civil Action No. 19-549 (MAS) **OPINION**

SHIPP, District Judge

This matter comes before the Court on Petitioner Marijan Cvjeticanin's amended motion to vacate sentence brought pursuant to 28 U.S.C. § 2255. (ECF No. 22.) Following an order to answer, the Government filed a response to the amended motion (ECF No. 25), to which Petitioner replied. (ECF No. 27.) For the following reasons, this Court will deny the amended motion, and will deny Petitioner a certificate of appealability.

I. BACKGROUND

Petitioner's mail fraud convictions arise out of actions he took while working as an attorney at the firm of Wildes & Weinberg, P.C., between 2010 and 2012 on behalf of two corporate clients – Automatic Data Processing, Inc. ("ADP"), and Broadridge Financial Solutions, Inc. ("Broadridge"). (Gov't's App. at A125-27, 664.)[1] At trial, Petitioner's former employer, Steven

[1] As the Government's Appendix, filed on the docket of this matter as documents 3-7 attached to ECF No. 25, contains all of the relevant transcripts of this matter formatted under a single and consistent system of page numbers, this Court will cite to that appendix for citations to the trial record of this matter.

Weinberg, as well as several government agents and employees of ADP and Broadridge, testified that, while employed at the firm, Petitioner engaged in a scheme to defraud ADP and Broadridge out of a considerable amount of money by purporting to place advertisements on the companies' behalf related to employee immigration applications, accepting payments for these advertisements, and then failing to ever place the advertisements in question. (*See id.* at A1-720.)

The evidence submitted at trial indicated that, while employed at the law firm, Petitioner was tasked with preparing permanent labor certification applications, which are used to acquire permanent immigration status on behalf of employees where qualified American applicants are unavailable, for ADP and Broadridge which were filed with the United States Department of Labor ("DOL"). (*Id.* at A116-117, 126-37.) As part of this process, the companies were required to submit proof that qualified American workers were unavailable in the form of evidence that several public newspaper advertisements had been placed which did not result in any qualified applicants. (*Id.* at A116-32.) While at the firm, one of Petitioner's duties included actually placing the advertisements and filing the DOL applications which contained the dates and locations of those advertisements. (*Id.*) Prior to 2010, Petitioner convinced the firm to cease using its former advertisement agency and to make use of a new entity – Flowerson Advertising ("Flowerson") – to place these ads. (*Id.* at A10, 125-30.) Plaintiff did not disclose, however, that he was the actual owner and operator of the Flowerson agency, making use of his wife's maiden name and a pseudonym to obscure this fact. (*Id.* at A130-31, 141-43, 219, 285-94, 368-69, 379, 387, 444-45, 462-67, 495-507, 539-43.)

Acting as both attorney and advertising agent, Petitioner, between 2010 and 2012, began to prepare DOL applications in which he asserted that certain advertisements had been placed, and billed ADP and Broadridge for those advertisements, without ever placing the advertisements in question. (*Id.* at A203, 206, 144-216, 221, 267, 387-91, 389-407.) Following the discovery of

these actions by Weinberg in late 2012, Weinberg acquired copies of the relevant periodicals, including Computer World magazine and a number of newspapers, and discovered that the vast majority of the advertisements had never been placed at all, and that some which Petitioner had claimed to have placed were actually only placed *after* the DOL sought to audit the filed labor certifications and sought proof of advertisement. (*Id.* at A156-90, 389-407.) In those instances, Petitioner would secure an advertisement, and then doctor the advertisement to make it look as if it had been placed on the date on which he originally claimed to advertise the underlying position. (*Id.* at A156-90, 209-10, 389-407.) A review of these same papers by Government agents likewise confirmed that in many instances, Petitioner billed ADP and Broadridge for advertisements that were not placed or which were placed after the fact and altered to appear as if timely submitted. (*Id.* at A149-90, 209-10, 229-30, 264-655, 389-408.) A search of Petitioner's home likewise resulted in the recovery of several of these doctored advertisements. (*Id.* at A383-408.)

As part of his investigation into Petitioner's actions following the discovery of Petitioner's ownership of Flowerson, Weinberg called Petitioner into a meeting which Weinberg recorded and which was played for the jury at trial. (*See id.* at A752-817.) During this meeting, Petitioner admitted to owning Flowerson and that he billed ADP and Broadridge for advertisements that were never placed, although he contended that at least some of these advertisements (specifically those placed in Computer World) were known by the client companies to have never been placed, a claim unsubstantiated by any other evidence in the record and directly contradicted by the testimony of the relevant employees of ADP and Broadridge. (*Id.* at A447-48, 462-72, 483-84, 496-513, 529, 532-34, 752-817.) During this exchange, Petitioner also refused to express any remorse at his actions, claimed to have been proud of what he accomplished, asserted that the clients had gotten value from his actions, and made various vague threats suggesting that if the matter were not swept under the rug, he would take actions which would make things difficult for