DLD-174

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **23-1645**

BRUCE A. QUARLES, Appellant

VS.

WARDEN MARIANNA FCI, ET AL.

(E.D. Pa. Civ. No. 2-90-cv-03625)

Present: JORDAN, CHUNG, and SCIRICA, Circuit Judges

Submitted are:

(1) Appellant's May 15, 2023, request for a certificate of appealability under 28 U.S.C. § 2253(c)(1);

(2) Appellant's June 14, 2023, request for a certificate of appealability under 28 U.S.C. § 2253(c)(1);

(3) Appellant's response;

(4) Appellant's motion for appointment of counsel; and

(5) Appellant's amended motion for appointment of counsel

in the above-captioned case.

Respectfully,

Clerk

F. 31.23 RECEIVED

BRUCE A. QUARLES, Appellant
VS.
WARDEN MARIANNA FCI, ET AL.
C.A. No. **23-1645**
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ORDER

Appellant's request for a certificate of appealability is denied. Reasonable jurists would not debate the District Court's denial of Appellant's purported motion pursuant to Rule 60(d)(1) of the Federal Rules of Civil Procedure. See Slack v. McDaniel, 529 U.S. 473, 484 (2000); Morris v. Horn, 187 F.3d 333, 340 (3d Cir. 1999); Payton v. Davis, 906 F.3d 812, 822 (9th Cir. 2018). Because Appellant's motion argued that the District Court mischaracterized his claim (or otherwise failed to address it fully), the motion arguably constitutes an unauthorized second or successive habeas petition that the District Court lacked jurisdiction to entertain. See Gonzalez v. Crosby, 545 U.S. 524, 530–31 (2005). To the extent, however, his motion attacks a defect in his habeas proceeding, relief under Rule 60(d)(1) is nevertheless not warranted. First, Appellant had the opportunity to raise his current arguments in a motion for reconsideration of the District Court's denial of his petition or in an appeal from the denial. Courts have repeatedly held that motions under Rule 60 are not a substitute for appeal. See United States v. Fiorelli, 337 F.3d 282, 288 (3d Cir. 2003) (Rule 60(b)); Fox v. Brewer, 620 F.2d 177, 180 (8th Cir. 1980) (Rule 60(d)). Second, while there are no express time limits to motions under Rule 60(d), this is an equitable remedy, which, in the context of habeas corpus, generally requires a showing of diligence. See Cox v. Horn, 757 F.3d 113, 126 (3d Cir. 2014). Nothing in the record explains, much less excuses, the thirty-year delay in filing Appellant's Rule 60(d) motion. Appellant's requests for appointment of counsel are denied.

By the Court,

s/Anthony J. Sciria
Circuit Judge

Dated: July 24, 2023
Sb/cc: Bruce A. Quarles
Katherine E. Ernst, Esq.

A True Copy:

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

APPENDIX "A"

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
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July 24, 2023

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RE: Bruce Quarles v. Warden Marianna FCI, et al
Case Number: 23-1645
District Court Case Number: 2-90-cv-03625

ENTRY OF JUDGMENT

Today, **July 24, 2023** 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: Stephanie
Case Manager
Direct Dial 267-299-4926

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

BRUCE A . QUARLES, Plaintiff,	:	
v.	:	No. 2:90-cv-3625
SAM SAMPLES, et. al., Defendants.	:	

OPINION
Motion Seeking an Independent Action, ECF No. 6 – Denied

Joseph F. Leeson, Jr. **March 14, 2023**
United States District Judge

In 1982, Bruce A. Quarles was found guilty of, among other things, second degree murder. After exhausting his appeal options, Quarles filed a habeas corpus petition under 28 U.S.C. § 2254. In 1991, the late Judge Raymond J. Broderick authored a memorandum that adjudicated Quarles's petition. In that memorandum, the Court addressed four claims made by Quarles. *See Quarles v. Samples*, No. CIV. A. 90-3625, 1991 WL 148773 (E.D. Pa. July 29, 1991).

One of those claims was that a government witness, Clarence Smith, gave false testimony in exchange for an improper deal from the Government. The Court reasoned that "[n]othing in the record reveals any type of improper deal." *Id.* at *2. Instead, the Court assumed that Quarles had "misinterpreted testimony that Smith gave at his preliminary hearing in which he referred to a plea agreement between himself and the Commonwealth." *Id.* The Court determined that there was "no evidence that Smith's plea agreement was in any way improper." *Id.* Ultimately, the Court denied Quarles's petition. *See id.*

Now, more than three decades later, Quarles has filed a motion seeking an independent action, in which he asks this Court to vacate its prior denial of his petition, grant the petition, and release him from state custody. *See* ECF No. 6, Mot. In his Motion, Quarles asserts that he never

argued that Smith received an improper deal in exchange for testifying against Quarles. Instead, Quarles claims that he argued in his petition "that it was 'unconstitutional' for the prosecutor to conceal from the court that [Smith] was testifying for a deal and, in so doing, denied him a fair trial." *Id.* In other words, Quarles argues that the late Judge Broderick misunderstood his original argument and, as a result, did not fully address one of his claims brought in his petition. Quarles argues that Judge Broderick's review and judgment of that claim amounts to a miscarriage of justice and that he is therefore entitled to relief from the Court's prior order denying his petition under Rule 60(d)(1) of the Federal Rules of Civil Procedure.

Under Rule 60(d)(1), a court may "entertain an independent action to relieve a party from a judgment, order, or proceeding[.]" An independent action brought under Rule 60(d)(1) "is generally treated the same as a motion under Rule 60(b)." *Sharpe v. United States*, No. CRIM. 02-771, 2010 WL 2572636, at *2 (E.D. Pa. June 22, 2010).

Rule 60(b) allows courts to provide relief from a final judgment for any of six reasons: (1) mistake or excusable neglect; (2) newly discovered evidence; (3) fraud or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied; and (6) any other reason that justifies relief. *See* Fed. R. Civ. P. 60(b)(1)–(6). Motions under Rule 60(b) "must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." *Id.* at 60(c)(1).

An independent action under Rule 60(d)(1) is often used as a "vehicle for reviewing a time-barred Rule 60(b) motion." *Fake v. Pennsylvania*, No. 1:17-CV-02242, 2019 WL 13255870, at *3 (M.D. Pa. Nov. 5, 2019) (cleaned up). Whereas the burden to prevail under Rule 60(b) is a heavy one, the burden under Rule 60(d) is even heavier. *See Jackson v. Ivens*, No. CV 01-559-LPS, 2019 WL 4604027, at *4 (D. Del. Sept. 23, 2019). Indeed, relief under Rule 60(d)(1) "is reserved for the

rare and exceptional case where a failure to act would result in a miscarriage of justice." 2010 WL 2572636, at *2 (citing *United States v. Beggerly*, 524 U.S. 38, 42–46 (1998)).

In order to maintain an independent action under Rule 60(d)(1), a plaintiff must establish a meritorious claim, lack of an alternative remedy, that the judgment is unconscionable, and that they have been diligent and are not at fault themselves. *See U.S. Care, Inc. v. Pioneer Life Ins. Co. of Illinois*, 244 F. Supp. 2d 1057, 1062 (C.D. Cal. 2002); *see also Allstate Ins. Co. v. Michigan Carpenters' Council Health & Welfare Fund*, 760 F. Supp. 665, 669 (W.D. Mich. 1991) (denying relief under Rule 60(b) because plaintiff "failed to take the steps necessary to protect its own interests"); *Lehman v. United States*, 154 F.3d 1010, 1017 (9th Cir. 1998) ("Neglect or lack of diligence is not to be remedied through Rule 60(b)(6)."); *Hess v. Cockrell*, 281 F.3d 212, 217 (5th Cir. 2002).

Even if the Court assumes that the late Judge Broderick misconstrued Quarles's original claim brought in his petition, there remains an obvious hurdle for Quarles to get over; he waited more than thirty years to file his Motion for an independent action. Quarles argues that his Motion is nevertheless timely because there is no time restriction for bringing a motion under Rule 60(d)(1). Though that may be true, Quarles must still show that he has been diligent in pursuing his claim and that he has not been negligent by failing to bring it sooner. Quarles has not met that extremely high burden.

Quarles does not even attempt to explain why he delayed more than three decades to file his Motion. The Court issued its memorandum opinion denying Quarles's petition in 1991. Unlike a claim of fraud that was not known at the time of the judgment, or a claim relying on evidence discovered after the judgment was rendered, Quarles did not need to wait to bring his Motion. Quarles had all of the information needed to bring his current Motion as far back as 1991. That is,

Quarles had his petition, and he had the Court's reasoning for denying the claims brought in his petition.

If Quarles made an argument as to why he could not bring his Motion before now, then the Court could consider whether his delay was justified (such an argument would have to be extremely compelling to justify the substantial delay). However, because Quarles makes no such argument, there is nothing for the Court to consider. The Court therefore has little choice but to determine that he was not diligent in bringing his claim and that the delay in bringing the Motion was caused by Quarles's own negligence. Those reasons alone are fatal to Quarles's request for an independent action. As a result, the Court denies the Motion with prejudice.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.
JOSEPH F. LEESON, JR.
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

BRUCE A . QUARLES, Plaintiff,	:	
v.	:	No. 2:90-cv-3625
SAM SAMPLES, et. al., Defendants.	:	

ORDER

AND NOW, this 14th day of March, 2023, upon consideration of Plaintiff's Motion for an Independent Action, and for the reasons given in the Court's Opinion issued this day, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. Plaintiff's Motion, ECF. No. 6, is **DENIED with prejudice**.
2. Plaintiff's motion to appoint counsel, ECF No. 2, is **DISMISSED** as moot.
3. Plaintiff's motion to proceed in forma pauperis, ECF No. 3, is **DISMISSED** as moot.
4. This case remains **CLOSED**.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.
JOSEPH F. LEESON, JR.
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1645

BRUCE A. QUARLES,
Appellant

v.

WARDEN MARIANNA FCI;
ATTORNEY GENERAL PENNSYLVANIA;
DISTRICT ATTORNEY PHILADELPHIA

(D.C. Civ. No. 2-90-cv-03625)

SUR PETITION FOR PANEL REHEARING

Present: JORDAN, CHUNG, and SCIRICA, 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, it is hereby O R D E R E D that the petition for rehearing by the panel is denied.

BY THE COURT,

s/Anthony J. Scirica
Circuit Judge

Dated: September 13, 2023