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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

No. 24-4435

v.

ORDER

(Filed 12/20/24)

ANTOINE DOUGLASS JOHNSON

Defendant - Appellant

Before: WALLACE, GRABER, and BUMATAY,
Circuit Judges.

The motion (Docket Entry No. 13) for leave to file an additional reply brief is denied.

The motion (Docket Entry No. 11) for summary affirmance is granted. We summarily affirm the district court's order denying appellant Antoine Johnson's (1) motion for protective order, (2) "motion seeking revocation of MS 09-5000," and (3) motion for Jencks Act material. See *United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard). The authority Johnson cites does not support the relief he requested or demonstrate error in the district court's disposition of his motions. To the extent Johnson raises new arguments on appeal, we do not consider them. See *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (this court generally will not review issues raised for the first time on appeal).

AFFIRMED.

UNITED STATES DISTRICT COURT WESTERN
DISTRICT OF WASHINGTON AT TACOMA

United States,
Plaintiff,
v
Antoine Johnson, et al.,
Defendants.

CASE NO. 3:09-cr-05703-DGE

ORDER ON MOTIONS (DKT.
NOS. 784, 819, 822, 825, 829)
{Filed on May 20th, 2024}

I INTRODUCTION

Antoine Johnson moves for relief under Federal Rule of Civil Procedure 52(b) (Dkt. No. 784), a protective order (Dkt. No. 819), “revocation of MS 09-5000” (Dkt. No. 825), and the production of Jencks Act material (Dkt. No. 829). LaWanda Johnson moves for “revocation of MS 09-5000.” (Dkt. No. 822.) The Court DENIES the Johnsons’ motions for the reasons identified below. The Court is aware of and will address separately the Johnsons’ remaining motions. (Dkt. Nos. 783, 786, 787, 810, 812, 813, 834, 840.) The Court assumes familiarity with the factual and procedural background of this case.

II DISCUSSION

A. Rule 52(b) Motion (Dkt. No. 784)

Citing declarations (Dkt. Nos. 752, 765) submitted in support of his petition for writ of error coram nobis (Dkt. No. 751), which the Court previously denied (Dkt. No. 782), Mr. Johnson brings a “Rule 52 Motion”¹ asking the Court to “make or amend findings” related to the accounting method used by one of his health clinics. (Dkt. No. 784.)

“The purpose of post-judgment motions under [Rule] 52(b) is to allow the parties to present newly discovered evidence and give the district court an opportunity to correct manifest errors of law or fact at trial, take additional testimony, make additional findings, or take other actions in the interests of justice.” *Gutierrez v. Wells Fargo Bank, N.A.*, 2010 WL 4072240, at *5 (N.D. Cal. Oct. 18, 2010). A party should not invoke Rule 52(b) to “re-litigate facts and legal theories that have been previously rejected by

¹ Federal Rule of Civil Procedure 52(b) provides that upon “a party’s motion filed no later than 28 days after the entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly.” The Court assumes without deciding that the Federal Rules of Civil Procedure apply to permit a challenge to a denial of writ of error coram nobis. See *United States v. Kroytor*, 977 F.3d 957, 962 n.2 (9th Cir. 2020) (The Ninth Circuit has “not resolved whether the civil rules apply to coram nobis proceedings”); *Harvest v. Castro*, 531 F.3d 737, 745 n.6 (9th Cir. 2008) (“The Supreme Court has [] explicitly held that Rule 52(b) . . . appl[ies] in habeas corpus proceedings”).

the court.” *ATS Prods., Inc. v. Ghiorso*, 2012 WL 1067547, at *1 (N.D. Cal. March 28, 2012). Mr. Johnson’s references to evidence and argument already submitted make clear that his motion is no more than an attempt to re-litigate issues previously presented in support of his petition, without raising any manifest error in the Court’s denial of that petition. (See Dkt. No. 784 at 1–2.) The Court accordingly DENIES Mr. Johnson’s motion. (Dkt. No. 784.)

B. Motion for Protective Order (Dkt. No. 819)

Mr. Johnson asks the Court to “issue an order to remind prosecutors of their obligations to disclose favorable evidence that is material to the defense.” (Dkt. No. 819 at 1.) Mr. Johnson cites Federal Rule of Criminal Procedure 5(f) in support of his motion, which he describes as a “relatively new rule that . . . was not in effect at the time of [his] original criminal proceeding (which terminated in 2012).” (Id.)

Federal Rule of Criminal Procedure 5(f)(1) requires a judge to “issue an oral and written order to prosecution and defense counsel” confirming the prosecutor’s Brady obligations “on the first scheduled court date” during which counsel for both parties are present. Mr. Johnson provides no authority indicating this rule retroactively requires courts to issue orders in closed cases. Accordingly, the Court DENIES Mr. Johnson’s motion for a protective order. (Dkt. No. 819.)

C. Motions Seeking Revocation of MS 09-5000
(Dkt. Nos. 822, 825)

In separate one-page motions (Dkt. Nos. 822, 825), the Johnsons move this Court to revoke an order issued in 2009 by United States Magistrate Judge Kelley Arnold, which had authorized the Government to obtain and use certain confidential medical records in relation to its criminal investigation of the Johnsons (Dkt. No. 811 at 5–7).

The Johnsons’ motions are exceedingly unclear. The Johnsons do not explain how the statutory and regulatory provisions, court filings, and Washington state caselaw they cite compel the Court to provide the relief sought. Further, the Johnsons do not make clear how their motion is “jurisdictional” such that they may “raise [it]. . . any time.” (Dkt. Nos. 822 at 1; 825 at 1.)

The Court will not revoke an order entered more than a decade ago absent a clear showing of entitlement to relief and authority of the Court to issue such a revocation. Accordingly, the Court DENIES the Johnsons’ “motion[s] seeking revocation of MS 09-5000.” (Dkt. Nos. 822, 825.)

D. Motion for Jencks Act Material (Dkt. No. 829)

Mr. Johnson asks the Court to issue an order under the Jencks Act, 18 U.S.C. § 3500, compelling the Government to produce the United States Postal Service personnel file of one of the Government's witnesses. (Dkt. No. 829 at 2.) Mr. Johnson suggests the information sought would demonstrate that the witness testified falsely about her last name at trial. (Id. at 1.)

Mr. Johnson offers no authority to demonstrate that the Jencks Act permits requests for material that are made after trial and following the denial of a petition for writ of error coram nobis. To the contrary, "[t]he 'appropriate time' to request Jencks Act material is during trial after the witness has testified on direct examination." *United States v. Allred*, 1989 WL 63615, at *2 (9th Cir. June 7, 1989) (emphasis in original); see also *United States v. Jonassen*, 759 F.3d 653, 663 (7th Cir. 2014) ("[A] request for Jencks Act material . . . made after the jury has rendered its verdict is not timely."). As such, the Court DENIES Mr. Johnson's motion. (Dkt.No. 829.)

III CONCLUSION

The Court DENIES Mr. Johnson's Rule 52(b) motion (Dkt. No. 784), motion for protective order (Dkt. No. 819), motion to revoke MS 09-5000 (Dkt. No. 825), and motion for Jencks Act material (Dkt. No. 829); and DENIES Ms. Johnson's motion to revoke MS 09-5000 (Dkt. No. 822).

Dated this 20th day

of May 2024.

/s/ David G. Estudillo

David G. Estudillo
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff - Appellee, No. 24-4435
v. ORDER
{Filed
ANTOINE DOUGLASS JOHNSON 01/14/25}
Defendant - Appellant

Before: WALLACE, GRABER, and
BUMATAY, Circuit Judges.

The motion for panel reconsideration (Docket entry No. 15) is denied and the motion for reconsideration en banc (Docket entry No. 15) is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

The motion (Docket Entry No. 16) to stay the mandate is denied.

No further filings will be entertained in this closed case.

Magistrate Judge Arnold

UNITED STATES DISTRICT COURT WESTERN
DISTRICT OF WASHINGTON AT TACOMA

In-Re: Search Warrants for	No. MS 09 - 5000
Records in the Possession of	Order authorizing
Broadway clinic, Inc., dba	Disclosure of Confide-
Broadway Clinic and	ntial Substance abuse
Family Practice and Antoine	treatment records
D. Johnson and LaWanda	{Filed Jan. 9 th , 2009}
Johnson	

ORDER

This Order is entered in connection with confidential medical records that the United States seeks to obtain through search warrants and authorized investigative demands from Antoine Johnson, M.D., Broadway Clinic, Inc., dba Broadway Clinic and Johnson Family Practice¹, and Lawanda Johnson (collectively "the Johnson Practices") that contain records of substance abuse treatment. Upon consideration of the United States' Ex Parte Motion for an Order under 42 U.S.C. § 290dd-2(b)(2)(C), authorizing disclosure to the United States and federal law enforcement personnel of patients' records obtained from the Johnson Practices and Lawanda

¹ Antoine Johnson has also registered a trade name, Ocean Shores Ambulatory Care.

Johnson that contain records of substance abuse treatment, and finding that:

1. The investigation being conducted is within the lawful jurisdiction of the government authority seeking access to the records, as provided in 42 C.F.R. § 2.66(a)(1);
2. There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;
3. The application does not refer to any patient by name and does not contain or otherwise disclose any patient identifying information, as provided in 42 C.F.R. § 2.66(a)(2);
4. Good cause exists for the Order in that:
 - a. There are no other effective ways of obtaining the information sought, as provided in 42 C.F.R. § 2.64(d)(1); and
 - b. The public interest and the need for disclosure of the records outweigh the potential injury to the patient, to the physician-patient relationship and to the treatment services, as provided in 42 C.F.R. § 2.64(d)(2);

It is hereby ORDERED that:

1. The United States may obtain production and use of the records including records referring to substance abuse treatment.
2. The United States may be assisted in the seizure of records referring to substance abuse treatment during execution of search warrants by local law enforcement officers from the Gray's Harbor County Sheriff's Office and investigators from the State of Washington Medical Fraud Control Unit and Department of Labor and Industries. However, following such seizure, records referring to substance abuse treatment shall remain in the custody of the United States pursuant to the provisions of Exhibit 3 attached to the United States' Motion, and may not be disclosed to such local and state officials absent further order of the Court.
3. As provided in 42 C.F.R. § 2.64(e)(1), disclosure shall be limited to those parts of the records which are relevant to the investigation of Dr. Antoine Johnson and Broadway Clinic, Inc., doing business as Broadway Clinic and Johnson Family Practice.

4. As provided in 42 C.F.R. § 2.64(e)(2), access to the records shall be limited to the United States and federal law enforcement personnel involved in the investigation, and to such experts as the United States may need to consult to analyze, interpret or organize the information contained in the records.
5. As provided in 42 C.F.R. § 2.64(e)(3), the United States shall follow the procedures outlined in Exhibit 3 attached to the United States' motion in this case, which are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services;
6. As provided in 42 C.F.R. § 2.66(d)(1), the United States shall delete patient identifying information from any documents made available to the public;
7. As provided in 42 C.F.R. § 2.66(d)(2), the United States shall refrain from using any information obtained pursuant to this Order to conduct any investigation or prosecution of a patient, or as the basis for an application for order under 42 C.F.R. § 2.65;

8. The United States shall notify Antoine Johnson, M.D. and any patient whose substance abuse treatment records are disclosed pursuant to this Order of the fact of disclosure, within ninety (90) days of disclosure or as soon thereafter as possible, as provided in 42 C.F.R § 2.66(b), granting the affected patients and the treatment program an opportunity to seek revocation or amendment of this Order;
9. The United State is further authorized to, at its discretion, return copies and/or originals of the disclosed substance abuse patient records to Antoine Johnson, M.D.
10. The United States' Motion and this Order shall remain under seal, except that the United States may provide copies of this Order to Antoine Johnson, M.D. and the affected patients, as part of the notification required in paragraph 7.

DATED this 9th, day of January, 2009.

/s/ J. Kelley Arnold
J. Kelley Arnold,
United States Magistrate Judge

SENTENCE MONITORING

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COMPUTATION DATA

As of 01-30-2015

-----Prior Computation No: 010 -----

Computation 010 was last updated on 04-04-2014 at
USC automatically.

Computation certified on 04-18-2012 by
DESIG/SENTENCE COMPUTATION CTR.

The following judgments, warrants and obligations
are included in prior computation 010: 010, 010.

Date computation began: 03-29-2012

Total Term In Effect: 87 Months

Total Term In Effect Converted ...: 7 Years 3 Months

Earliest Date of Offense: 04-15-2008

Jail Credit: From Date Thru Date

10-05-2009 03-28-2012

Total Prior Credit Time: 906

Total Inoperative Time: 0

Total GCT Earned and Projected: 341

Total GCT Earned: 270

Statutory Release Date Projected: 01-28-2016

App. 15

Elderly Offender Two Thirds Date: 08-05-2014
Expiration Full Term Date: 01-03-2017
Time Served: 5 years 3 months 26 days
Percentage of Full Term Served: 73.4
Percent of Statutory Term Served: 84.2

3621E Complete Resident Program: 05-20-2014
3621E Complete Community Program ...: 01-31-2015
3621E Release Date: 01-31-2015

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{Page 2 of 3 filed in the U.S. District Court for the
Western District of Washington on 02/07/2024}