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DLD-161

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

C.A. No. 24-1646

WILLIAM KAETZ, Appellant

VS.

UNITED STATES OF AMERICA
(W.D. Pa. Civ. No. 2-22-cv-01148)

Present: JORDAN, PORTER, and PHIPPS, Circuit
Judges Submitted are:

- (1) Appellant's motion for judicial notice;
- (2) By the Clerk for possible summary action under 3rd Cir. LAR 27.4 and Chapter 10.6 of the Court's Internal Operating Procedures;
- (3) Appellant's motion docketed as motion to expand certificate of appealability;
- (4) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1); and
- (5) Appellant's motion for a mandate upon the lower court in the above-captioned case.

Respectfully,
Clerk

ORDER

Appellant's request for a certificate of appealability ("COA") is denied because jurists of reason would not debate the denial of his motions at ECF Nos. 78 and 81, which we construe as motions under Fed. R. Civ. P. 60. See 28 U.S.C. § 2253(c)(2); Bracey v. Superintendent Rockview SCI, 986 F.3d 274, 282-83 (3d Cir. 2021). Jurists of reason might debate whether the District Court, instead of denying those motions on the merits,

should have dismissed them on the ground that they constituted unauthorized second or successive motions under 28 U.S.C. § 2255. See Gonzalez v. Crosby, 545 U.S. 524, 530-31 (2005). But jurists of reason could not debate whether the court should have granted relief. Appellant claims, *inter alia*, that he is innocent of violating 18 U.S.C. § 119 on the theory that the victim judge was not entitled to the protection of that statute because her alleged reliance on legislative history in one of appellant's cases meant that the judge was not performing "official duties." That claim is frivolous, and appellant did not otherwise set forth any arguable basis for relief. Appellant's other motions in this Court are denied except to the extent that we have considered and reject his challenges to the District Court's denial of his motions for "judicial notice," which are similarly frivolous. In light of our denial of the appellant's request for a COA, we do not reach the issue of summary action.

By the Court,
s/ Peter J. Phipps
Circuit Judge

Dated: August 7, 2024
Amr/cc: All counsel of record

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 24-1646
William F. Kaetz Appellant
v.
United States of America
(W.D. Pa. No. 2:22-cv-01148)
SUR PETITION FOR REHEARING

Present: CHARGES, chief judge, JORDAN, HAR-
DIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY, PHIPPS, FREEMAN, AND MONT-
GOMERY-REEVES, Circuit Judges.

The petition for hearing 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/ Peter J. Phipps
Circuit Judge

Date: September 25, 2024
CJG/cc: William F. Kaetz
Laura S. Irwin, Esq.

**Case 2:22-cv-01148-MRH Document 88 Filed
04/03/2024 Text-Only Entry**

04/03/2024 88 ORDER DENYING MOTION TO SET ASIDE JUDGMENT. Plaintiff moves to set aside the Court's Order at ECF No. 45 denying Plaintiff's Motion to Vacate and related Motions pursuant to Rule 60(d)(3) of the Federal Rules of Civil Procedure. (ECF No. 81). Plaintiff's filing at ECF No. 81 appears to be nearly identical to his filing of a Motion seeking the same relief in the United States District Court for the District of New Jersey. (DNJ Docket No. 23-2021, ECF No. 9). Plaintiff's Motion is DENIED for the same reasons as set forth by the District of New Jersey in Kaetz v. United States, No. 23-2021, 2024 WL 918344, at *1-2 (D.N.J. Mar. 4, 2024). Plaintiff's Motion, which repeats a number of unsubstantiated and implausible allegations of fraud and incorrect legal conclusions, fails to meet the "exacting" requirements of Rule 60(d)(3), Kaetz, 2024 WL 918344 at *1, which requires that a court, in order to "set aside a judgment based upon its finding of fraud on the court when an officer of the court has engaged in 'egregious misconduct,'" such a finding must be supported by "clear, unequivocal and convincing evidence of intentional fraud." In re Bressman, 874 F.3d 142, 150 (3d Cir. 2017) (quoting Herring v. United States, 424 F.3d 384, 390 (3d Cir. 2005)). The Court concludes that Plaintiffs' allegations fail to contain clear, unequivocal, or convincing evidence of any intentional fraud or egregious misconduct on the part of any officer of this Court or any other federal Court. Plaintiff's Motion is therefore denied. Signed by Chief Judge Mark R. Hornak on 4/3/24. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (bdb) (Entered: 04/03/2024)

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES)
OF AMERICA,) 2:21-cr-00211
v.) 2:22-cv-01148
WILLIAM F. KAETZ,)
Defendant.)

OMNIBUS ORDER DENYING VARIOUS MOTIONS FOR RELIEF, DIRECTING CERTAIN ACTIONS BY THE DEFENDANT AND REAFFIRMING THE SETTING OF AN IN-PERSON HEARING WITH THE DEFENDANT PRESENT

The Defendant/Petitioner William Kaetz has filed Motions for various relief as set forth Docket No. 2:21-cr-211, ECF No. 255 and Docket No. 2:22-cv-1148, ECF No. 78. Also pending is the Motion of the United States at ECF No. 246 at 21-cr-211 seeking an Order authorizing the deletion of certain electronically stored information from certain devices, and a renewed Motion to Withdraw by the Defendant's counsel of record, ECF No. 196 (as renewed via subsequent status reports of such counsel), all collectively "the Motions".

Upon a consideration of the record including the Motions and the Court-ordered status reports of counsel, ECF Nos. 254, 246, 245, 242, 240 and 196 at 21-cr-211, along with the applicable legal principles and the prior Orders of this Court at ECF Nos. 237, 235, 234, 223, 222, 221, 217, 214, 209, 206, 199, 197, 196, 190, 183, 176, 169, and 167 at 21-cr-211, each bearing upon one or more issues now before the

Court, the Court resolves all such pending Motions as follows, and reaffirms that an omnibus hearing on the pending request of the Probation Office to modify the Defendant's special conditions of supervision, the Motion of attorney Steven Townsend to withdraw, the Government's Motion to delete certain information, and the representational status of the Defendant will be conducted as scheduled and in person in Courtroom 6A of the U.S. Courthouse, 700 Grant Street, Pittsburgh, PA on April 4, 2024 at 2:30 PM, EDT. *See* ECF No. 252, 253.

The Defendant is to appear in person at such hearing, and any failure to so appear may be treated as a contempt of this Court and sanctioned as such under prevailing law. Further, given (1) that the Defendant has been made aware on multiple occasions of the relief sought in terms of the modification of the conditions of his supervision/counsel's Motion to Withdraw/the Government's Motion to delete certain electronic content, (2) that the Defendant has been represented by counsel as he had requested, (3) that such counsel has advised the Court that he believes that he is compelled to withdraw his appearance solely because he was sued by the Defendant in New Jersey state court (a lawsuit that has been dismissed by the New Jersey state court for want of jurisdiction), and (4) the fact that the Defendant refused to appear before the Court at a prior hearing on these same topics, should the Defendant fail to appear in person at the hearing reaffirmed by this Order, the Court hereby advises the Defendant that the Court may treat such failure to appear and participate by the Defendant as his consent to the modification of the Defendant's conditions of supervision, his consent to the withdrawal of his counsel, his consent to the

deletion of certain electronically stored information, and his consent to any other relief that is fairly encompassed within the matters now before the Court, all without further notice or hearing, as the Defendant has been provided with multiple full and fair opportunities to be heard in person or by counsel and has refused to do so.

Mr. Townsend shall forthwith deliver a copy of this Order to the Defendant by electronic means and promptly file a certificate of such service.

The Court further Orders as follows:

- 1) The Defendant's Motion for recusal or disqualification of the undersigned is again denied, as the record reveals no basis for such recusal pursuant to Canon 3 of the Code of Conduct for United States Judges, nor 28 U.S.C. § 144, 455.
- 2) The Motion to continue the referenced hearing is denied, as no compelling basis for such relief has been presented to the Court.
- 3) The Motion to Dismiss the request of the Probation Office to modify the Defendant's conditions of supervision is denied. That request is facially legitimate considering the facts of the offense conduct involved in the criminal prosecution at 21-cr-211, and the Defendant's prior federal conviction and sentence for threats of serious bodily harm made to a federal officer.
- 4) The Motion to set a briefing schedule is dismissed as moot in light of this Order.
- 5) The Motion to reopen the Defendant's Motion/Petition for relief pursuant to 28 U.S.C. § 2255 is denied. If considered a Motion for Reconsideration, it is baseless, as there are presented no intervening controlling law calling the Court's prior disposition into question, nor the presentation of facts unavailable to

the parties at the time that disposition was rendered, nor was the Court's disposition manifestly unjust under the prevailing law; if treated as a Motion for relief pursuant to Fed. R. Civ. P. 60, none of the bases for such relief via that Rule are demonstrated by the record.

6) The Court will address the Motions to Withdraw and to Delete Electronic Information at the time of the hearing.

7) Finally, to the extent the Defendant now complains about the status of his representation, the record reflects that the Defendant upon interrogation by the Court during the video hearing he had requested specifically confirmed that he wanted to be represented by counsel, specifically Mr. Townsend, thereafter filed and pursued a civil action against Mr. Townsend in the state courts of New Jersey which the state courts dismissed for want of jurisdiction, and then the Defendant failed, without excuse, to appear at the prior hearing set by this Court to hear from the Defendant on the topic of his representation, which may at the Court's election be treated as a waiver or forfeiture of his right to counsel, and/or to engage in self-representation, and/or to object to any of the relief sought in matters now pending before the Court.

The Court will hear from all parties, as to all pending matters, at the hearing confirmed by this Order. Given the facially dilatory conduct of the Defendant in these actions as found and reflected in the numerous prior Orders of this Court as set forth above, the Defendant must be prepared to proceed as to all matters at that hearing, even if he requests and is granted the authority to engage in self-representation at such hearing.

s/ Mark R. Hornak

Mark R. Hornak

Chief United States District Judge

Dated: April 1, 2024

**Additional material
from this filing is
available in the
Clerk's Office.**