

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 00-2145-CIV-HURLEY/WHITE

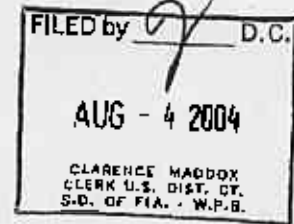
JESSE DEAN,

Movant,

vs.

UNITED STATES OF AMERICA,

Respondent.



**ORDER GRANTING MOTION FOR RECONSIDERATION AND
VACATING ORDER DENYING MOTION REQUESTING RELIEF FROM JUDGMENT
PURSUANT TO FED R. CIV. P. 60(b)(3) AND REFERRING MOTION REQUESTING
RELIEF FROM JUDGMENT PURSUANT TO FED R. CIV. P. 60(b)(3) TO THE
MAGISTRATE JUDGE FOR A REPORT AND RECOMMENDATION**

THIS CAUSE comes before the court upon a motion for reconsideration of the court's July 8, 2004 order denying Mr. Dean's motion requesting relief from judgment pursuant to Fed R. Civ. P. 60(b)(3) due to a fraud allegedly brought upon the court.

Mr. Dean seeks to use Fed. R. Civ. P. 60(b)(3) as a vehicle to "amend his original petition filed pursuant to Title 28 U.S.C. § 2255." Fed. R. Civ. P. 60 states that:

[o]n motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

Mr. Dean correctly cites Gonzalez v. Crosby, 366 F.3d 1253 (11th Cir. 2004), a very recent en banc opinion, as the governing Eleventh Circuit case law regarding this issue. In Gonzalez, the Eleventh Circuit specifically held that "a Rule 60(b) motion seeking to reopen the judgment in a §2254 or

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§2255 case should be denied by the district court, unless it is filed to correct a clerical mistake (meaning it is really a Rule 60(a) motion) *or is filed pursuant to Rule 60(b)(3) to remedy a fraud agents of the government perpetrated on the federal court.*" (emphasis added).

This court's previous order mistakenly relied upon prior case law in holding that Rule 60(b)(3) could not be used to reopen a § 2255 judgment. See e.g. United States v. Pratt, 48 Fed. Appx. 324 (10th Cir. 2002). According to the holding of Gonzalez, Mr. Dean is entitled to a judicial determination regarding the merits of his Rule 60(b)(3) motion. Therefore the court vacates its July 8, 2004 order denying Mr. Dean's motion requesting relief from judgment pursuant to Fed R. Civ. P. 60(b)(3) due to a fraud allegedly brought upon the court. Furthermore, pursuant to Administrative Order 2003-19 of this Court, the court refers Mr. Dean's Rule 60(b)(3) motion to the Honorable Patrick A White, United States Magistrate Judge, for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters.


CONCLUSION

Accordingly, it is hereby **ORDERED** and **ADJUDGED**:

1. Mr. Dean's motion for reconsideration [DE # 93] is **GRANTED**.
2. The Court's July 8, 2004 order denying motion requesting relief from judgment pursuant to Fed. R. Civ. P. 60(b)(3) [DE # 92] is **VACATED**.
3. The movant's motion requesting relief from judgment pursuant to Fed. R. Civ. P. 60(b)(3) [DE # 91] is **REFERRED** to the Honorable Patrick A White, United States Magistrate Judge, for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. Judge White is instructed to make a specific recommendation as to whether the savings clause of Rule 60(b) should be applied in Mr. Dean's case to relieve him of the obligation to file Rule 60(b)(3) motions not more than one year after the judgment was entered.
4. The movant's motion for bail pending resolution of his motion requesting relief from judgment [DE # 90] is **DENIED**.

Order Granting Motion for Reconsideration
Dean v. United States of America
Case No: 00-2145-CTV-HURLEY/WHITE

DONE and SIGNED in Chambers at West Palm Beach, Florida this ~~2nd~~ ^{AUGUST} day of ~~July~~, 2004.


Daniel T.K. Hurley
United States District Judge

copies furnished to:

Hon. Patrick A. White

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