

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-60838-CIV-ZLOCH

HOWARD HELFANT,

Movant,

vs.

**O R D E R**

UNITED STATES OF AMERICA,

Respondent.  

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THIS MATTER is before the Court upon Movant Howard Helfant's Motion For Relief Pursuant To Fed.R.Civ.Pro. Rule 60B (DE 13). The Court has carefully reviewed said Motion and the entire court file and is otherwise fully advised in the premises.

By prior Orders, the Court denied Movant Howard Helfant's Motion To Vacate Sentence And Set Aside Guilty Plea By A Person In Federal Custody Under 28 U.S.C. § 2255 (DE 5) and Unopposed Motion For Reconsideration (DE 8). The factual and procedural history of this action and the underlying criminal action have been previously stated and need not be repeated again. See DE 5, pp. 1-3.

Movant's original Motion (DE 1) was made on one ground only: Movant's conviction and sentence have worked a miscarriage of justice based on the fact that the Indictment against most of the other Defendants in the underlying criminal action has been dismissed. In its Order, the Court noted that Movant waived this ground by pleading guilty. See DE 5, p. 3, citing United States v. Broce, 488 U.S. 563, 569 (1989); United States v. Betancourth, 554

F.3d 1329, 1334 (11th Cir. Jan. 13, 2009); United States v. Kaiser, 893 F.2d 1300, 1302 (11th Cir. 1990).

The previous Motion (DE 7) was styled as one for reconsideration, governed by the Federal Rules of Civil Procedure to the extent they are not inconsistent with the Rules Governing Section 2255 Proceedings. See Rule 12 of the Rules Governing Section 2255 Proceedings. The Court previously explained that Federal Rule of Civil Procedure 60(b) delineates the grounds on which a party may obtain relief from a court's order or judgment. Those grounds include mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, misconduct by the opposing party, or any other just reason. Fed. R. Civ. P. 60(b)(1)-(6). None of these grounds were argued, and none was patent in that Motion.

The instant Motion (DE 13) reasserts the same ground raised in the Movant's previous Motion (DE 7), and it is one not argued in the first Motion (DE 1). Just as Movant's previous Motion For Reconsideration (DE 7), the instant Motion is a successive motion under § 2255, and only the Court of Appeals can give Movant permission to file such a second or successive motion. See Rule 9 of the Rules Governing Section 2255 Proceedings.

Accordingly, after due consideration, it is

**ORDERED AND ADJUDGED** that Movant Howard Helfant's Motion For Relief Pursuant To Fed.R.Civ.Pro. Rule 60B (DE 13) be and the same

is hereby **DENIED**.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, this 27th day of August, 2009.



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WILLIAM J. ZLOCH  
United States District Judge

Copies furnished:

All Counsel of Record