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of petitioner.*

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
HONOLULU DIVISION

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JUN 15 2016

at 12 o'clock and 35 min. P.M.
SUE BEITIA, CLERK

UNITED STATES OF AMERICA,)	
)	
Respondent - Plaintiff,)	USDC Case No. 1:14-cv-090-SOM
)	
v.)	USDC Case No. 1:06-cr-080-SOM-5
)	
ETHAN MOTTA,)	Hon. Susan Oki Mollway
)	United States District Court Judge
Petitioner - Defendant.)	
)	

PETITIONER'S PRO SE MOTION FOR RELIEF FROM JUDGMENT
OR ORDER PURSUANT TO RULE 60(b)(1), (2) & (6)
FEDERAL RULES OF CIVIL PROCEDURE

COMES NOW ETHAN MOTTA, Petitioner *pro se* in the above styled and numbered cause and respectfully moves before this Court for entry of an Order, granting the relief requested in all respects.

IN SUPPORT THEREOF, Petitioner would show the Court the following facts, circumstances and points of law:

I.

A. RELEVANT PRELIMINARY STATEMENT

For the sake of brevity, Petitioner ("Motta") will summarize the procedural history of his case and relevant considerations leading to the instant motion: In 2006 a grand jury returned an indictment charging Motta with Racketeering (RICO) and murder (VICAR) related charges. Motta initially tried to accept responsibility, however, this Court could not accept the stipulated sentence as 18 U.S.C. §1959(a)(1) carries a mandatory life sentence. (DE#. 886 - Change of Plea Hearing). Trial on the

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Mr. Motta; NO original signature
of petitioner.

EXHIBIT "A"

merits ensued with Motta being convicted and sentenced to Life imprisonment.

Motta's conviction and sentence were affirmed by the Ninth Circuit on direct appeal. (See, USCA Case No. 09-10499). Motta filed a *certiorari* petition with the Supreme Court, which denied on February 19, 2013. (See, SCOTUS Case No. 12-5496). Motta then submitted a Motion to Vacate via the provisions of 28 U.S.C. §2255. The petition was filed, by this Court's findings, at "the earliest" on February 21, 2014. (DE #. 1665 - Order Dismissing §2255 Petition). That the petition was filed out-of-time is not in dispute. (*Id.* at 7).

Because this Court found that petition was untimely, the central issue was whether equitable tolling should apply. Motta argued that tolling was appropriate as he originally drafted his §2255 on a word processor made available by the institution, and that during the week of his deadline the printer accompanying the word processor was out of order. Petitioner therefore, was unable to produce a final version of the petition due to this impediment. (DE # 1665, 6).

In April and May of 2015, this Court held a continuous hearing where evidence was presented on the issue. Some of the evidence presented was contradictory and the Court was doubtful of the credibility of certain aspects of the testimony presented. (*Id.* 31). However, the main point remained uncontested; i.e., that the printer was unavailable during the entire week of February 16-23, 2014. (*Id.*, 5-6). In its Memorandum Opinion and Order, this Court declined to toll the statute of limitations for two reasons. First, the Court found that Petitioner did not act reasonably diligent because he did not clarify the deadline after being told that his 2255 petition was due sometime around Valentine's Day. (*Id.* 36). The Court added that though Petitioner had "something" he could have mailed on February 19, 2014, he did not. The Court finished by noting that Petitioner was still

adding things to his motion on February 20, 2014. (*Id.*). Second, The Court did not see any extraordinary circumstance in the printer not being available as it discredited Petitioner's assertions that he knew the deadline was February 19, and instead found Petitioner truly believed the deadline was February 22, 2014. (*Id.*, 37). The Court went on to note it had every intention of granting tolling under the circumstances of this case based on (1) that the deadline was only missed by two days; (2) Petitioner was sentenced to Life imprisonment, and (3) it was the *last* available remedy to correct or vacate the sentence and conviction. Yet incomprehensibly the Court declined to do so based on the facts presented. In sum, this Court held equitable tolling did not apply because it found Motta did not show he was diligent or that some extraordinary circumstance stood in his way. After his timely Notice of Appeal, a Certificate of Appealability ("COA") was denied by the Ninth Circuit and dismissed on November 2, 2015. (See, USCA Case No. 15-16426).¹

B. RULE 60(b), Fed. R. Civ. P.

The 2007 restyled Rule 60(b) provides six grounds for relief from a final judgment, order, or proceeding. "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons." Relevant here, are the

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As a *pro se* petitioner incarcerated in federal prison and without the benefit of formal training as an attorney, Motta is entitled to and contemporaneously invokes the full measure of the liberal pleading and *construance* doctrine first fully expressed in *Estelle v. Gamble*, 429 U.S., 97 (1976). The doctrine obliges this Court to apply the law liberally and with a duty of *construance* under any provision or practice which would be most beneficial for the relief being sought, regardless of couching by the *pro se* pleader. As a result of Motta's *pro se* status, the instant Motion and Memorandum of Law must be held to less stringent standards than those drafted by attorneys. Further, the allegations raised herein, must be taken as true and consequently construed in light most favorable to his position in any issue not specifically rebutted or procedurally waived by Respondent ("government").

following:

- (1) "mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (6) any other reason that justifies relief."

II.

A. PROCEDURAL ANALYSIS

As an initial matter, Motta submits that: following the Supreme Court's decision in *Gonzalez v. Crosby*, 545 U.S. 524 (2005), as it relates to the filing, consideration and determination of Rule 60(b), Fed R. Civ. P. Motions, the instant action is properly before this Court attacking the integrity of his federal habeas proceedings and seeks relief from the judgment of this Court as noted above and argued in his Contemporaneous Memorandum of Law in Support filed herewith. He submits for consideration as follows: Motta does not advance one or more predicate "claims" new or otherwise; he does not seek to "add a new ground for relief" (except as may be applied substantively or under 60(b)(2)), and does not "attack any of this Court's previous resolutions" of any of his prior claims which have been decided "*on the merits*".² Therefore the Motion is not an unauthorized attempt to bypass the gate-keeping requirements of 28 U.S.C. §2244(a) or (b). Thus, Motta seeks to avail himself of the procedural mechanism permitted via Rule 60(b), Fed. R. Civ. P. for relief from the judgment of this Court as enunciated in each of the afore noted subsections and reopen that

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The *Crosby* Court's "on the merits" definition informs: "[t]he term 'on the merits' has multiple usages." Yet more correctly defined when a 60(b) motion attacks *some defect* in the proceedings or when, as here the motion asserts that a previous ruling, which precluded a merits determination was error.(Emphasis provided).

judgment.

B. PROCEDURAL CLAIMS AND DEFECTS

Motta attacks the defects in his original federal habeas proceeding decided before this Court on June 16, 2015 (DE #4) and as fully set forth and described in his Contemporaneous Memorandum of Law in Support filed herewith.

III.

Motta submits that each of the foregoing matters represent unusual and extreme circumstances where principles of equity demand relief. It is respectfully advanced that life without the possibility of parole is a harsh and extreme penalty. One that sets a course not only for redemption but answers to questions that have previously gone unanswered and fairness undiscovered as Motta has diligently pursued his available avenues for relief. Categorical denial of the instant Motion without reaching the merits of his allegations would chill the judicial process and work an injustice of monumental proportions upon Motta. In the interests of justice and finality, Motta has properly challenged the integrity of the initial habeas proceedings before this Court by seeking to reopen his collateral attack by vacatur of this Court's judgment. It is respectfully requested.

Dated: June 13, 2016

Respectfully submitted

By: /s/ Ethan Motta
Ethan Motta
No. 95609-022
USP Lee
P.O. Box 305
Jonesville, VA 24263

DECLARATION

I Ethan Motta, herein declare under penalty of perjury that I am the Petitioner *pro se* in the above stated matter and that the foregoing is true and correct based upon information and belief and not willfully false. I make this declaration pursuant to 28 U.S.C. § 1746 this 13th day of June, 2016.

By: /s/ Ethan Motta
Ethan Motta
Petitioner *Pro Se*

CERTIFICATE OF SERVICE

I herein certify that a true copy of the foregoing was sent via first class United States mail with postage prepaid and affixed thereon this 13th day of June, 2015 to: The Clerk of this Court (by Express Mail), and the Office of the U.S. Attorney, Thomas J. Brady, AUSA at 300 Ala Moana Blvd. Suite 6100, Honolulu, HI. 96850

By: /s/ Ethan Motta
Ethan Motta
Petitioner *Pro Se*