

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMARIO A. MITCHELL,

Petitioner,

v.

Civil Case No. 04-73559
Honorable Patrick J. Duggan

JERI-ANN SHERRY,

Respondent,

**OPINION AND ORDER DENYING PETITIONER'S MOTION TO VACATE
DISTRICT COURT'S ORDER ENTERED FEBRUARY 9, 2006**

This is Petitioner's fourth attempt to convince this Court to vacate its February 9, 2006 opinion and order denying his habeas corpus petition brought pursuant to 28 U.S.C. § 2254. Petitioner's present motion, filed pursuant to Federal Rule of Civil Procedure 60(b) on March 11, 2013, is not timely for the same reasons provided by this Court when denying his previous motions. (*See* ECF Nos. 40, 44.) Although not explicitly stated in the Court's previous decisions, Petitioner fails to demonstrate that he is entitled to relief based on his claim of innocence. As the Supreme Court stated in *Herrera v. Collins*, "[c]laims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding." 506 U.S. 390, 400, 113 S. Ct. 853, 860 (1993). Moreover, Petitioner's submission of his own affidavit to establish his innocence would not be sufficient to prove his claim. *See Schlup v. Delo*, 513 U.S. 298, 324, 115 S. Ct. 851, 865 (1995) (explaining that, to be credible, claims of actual

innocence require the “petitioner to support his allegations of constitutional error with *new* reliable evidence-whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence).

For these reasons,

IT IS ORDERED, that Petitioner’s motion to vacate (ECF No. 45) is **DENIED**;

IT IS FURTHER ORDERED, that the Court declines to issue a certificate of appealability with respect to this decision.

Dated: April 19, 2013

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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AAG Debra M. Gagliardi