

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

DEMETRIUS BAILEY,)	
Petitioner,)	
)	2:13cv1362
vs.)	Electronic Filing
)	
VINCENT MOONEY,)	
Respondent.)	

MEMORANDUM ORDER

AND NOW, this 29th day of January, 2018, after the petitioner, Demetrius Bailey, filed a Rule 60(b) motion, and after a Report and Recommendation was filed by the United States Magistrate Judge granting the parties a period of time after being served with a copy to file written objections thereto, and upon consideration of the objections filed by the petitioner as well as his supplements to the motion, and upon independent review of the motion and the record and upon consideration of the Magistrate Judge's Report and Recommendation (ECF No. 27), which is adopted as the opinion of this Court,

IT IS ORDERED that the Rule 60(b) motion submitted by petitioner (ECF No. 25), as supplemented (ECF Nos. 29, 30, 31) is dismissed as this Court lacks jurisdiction to entertain the motion and, because reasonable jurists could not conclude that a basis for appeal exists, a certificate of appealability is denied.

Petitioner's objections are without merit. Notwithstanding petitioner's protestations to the contrary, at the very least the United States Court of Appeals for the Third Circuit's May 12, 2016, disposition establishes that petitioner has filed a prior application that counts as a habeas corpus petition under § 2254 and now makes any attempt to advance substantive claims for relief from the states court judgment a second or successive petition. Thus, his current attempts to

attack his conviction and/or sentence can only be viewed as being beyond this court's jurisdiction as an unauthorized second or successive petition. And as the magistrate judge keenly explained, even when viewed as a Rule 60 motion, the nature of petitioner's asserted grounds make unequivocally clear that they have not been presented in a timely manner under any subsection of Rule 60. Consequently, this court is without authority to entertain Bailey's current filing.

IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure if the petitioner desires to appeal from this Order he must do so within thirty (30) days by filing a notice of appeal as provided in Rule 3, Fed. R. App. P.

s/ DAVID STEWART CERCONE
David Stewart Cercone
Senior United States District Judge

cc: Demetrius Bailey
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(Via First Class Mail)