

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

COREY MINOR, #14282-078

§

VS.

§

CIVIL ACTION NO. 4:09cv317

§

CRIMINAL ACTION NO. 4:07cr48(1)

§

UNITED STATES OF AMERICA

§

MEMORANDUM OPINION AND ORDER

Movant Corey Minor filed the above-styled and numbered motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. This court denied his § 2255 motion and dismissed his case. Following Final Judgment and the Fifth Circuit’s decision affirming, Movant filed a motion for reconsideration, which this court also denied. On appeal, the Fifth Circuit vacated the order denying Movant’s motion for reconsideration. Concluding that Movant’s claims were not barred by the appeal waiver, it remanded the case for further proceedings.

MOTION FOR RECONSIDERATION

The Fifth Circuit has observed that “[a]ny motion that draws into question the correctness of a judgment is functionally a motion under Civil Rule 59(e), whatever its label.” *Harcon Barge Co. v. D&G Boat Rentals, Inc.*, 784 F.2d 665, 669-70 (5th Cir. 1986) (en banc) (citing 9 Moore’s Federal Practice ¶ 204.12[1] at 4-67 (1985)). “Rule 59(e) serves the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence. . . . Reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly.” *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004) (internal citations and quotations omitted). The Fifth Circuit recognizes that Rule 59(e) “favor[s] the denial of motions to

alter or amend a judgment.” *Southern Constructors Group, Inc. v. Dynalectric Co.*, 2 F.3d 606, 611 (5th Cir. 1993). The rule does not exist to be a vehicle for re-litigating old issues, presenting the case under new theories, obtaining a rehearing on the merits, or taking a “second bite at the apple.” *Sequa Corp v. GBJ Corp.*, 156 F.3d 136, 144 (2d Cir. 1998). However, it allows a party to “question the correctness of a judgment.” *Templet*, 367 F.3d at 478.

The rule for reconsideration of a final judgment allows a court to alter or amend a judgment because of (1) an intervening change in controlling law, (2) the availability of new evidence not available previously, (3) the need to correct a clear error of law or fact, or (4) to prevent a manifest injustice. *Schiller v. Physicians Resource Group, Inc.*, 342 F.3d 563, 567 (5th Cir. 2003). Because Movant filed his motion for reconsideration thirty-seven (37) days after Final Judgment, his motion is construed as a Rule 60(b) motion.

FACTS OF THE CASE

Movant owned and operated a securities brokerage firm named “Christ Minor Investments,” through which Movant sold securities to the public. From 2003 through November 2006, Movant devised and implemented a scheme to defraud his customers. He obtained money from customers by falsely representing that their money would be used to buy securities. Instead, Movant used the money for his personal benefit and would send false account statements to customers. Movant had at least sixty-four (64) victims. Movant’s fraudulent scheme caused an actual loss of \$3,421,958.21 to his victims.

After being named in a one-count information, Movant pleaded guilty pursuant to a written plea agreement for mail fraud, in violation of 18 U.S.C. §1341. Movant signed a plea agreement stating, “This plea of guilty is freely and voluntarily made and is not the result of force, threats, or

promises other than those set forth in this plea agreement.” Immediately above his signature on the agreement, he stated, “I have read (or had read to me) this Plea Agreement and have carefully reviewed every part of it with my attorneys. I fully understand it and voluntarily agree to it.” Movant also stated that (1) he understood the nature and elements of the crimes to which guilt is admitted and that the Factual Statement signed is true, (2) he had “thoroughly reviewed all legal and factual aspects of this case with his/her lawyers and is fully satisfied with that lawyers’ legal representation”, (3) he received satisfactory explanations from his lawyer concerning each paragraph of the plea agreement, each of his rights affected thereby, and the alternatives to entering a guilty plea, and (4) after discussing it with his counsel, he “concedes guilt and has concluded that it is in [his] best interest to enter this agreement rather than proceeding to trial.”

In Movant’s Factual Statement, he admitted that he devised a scheme to defraud customers of investments and to obtain their money by false and fraudulent pretenses and representations. Movant then outlined the specific manner in which he schemed and defrauded at least 64 customers.

Furthermore, a “Findings of Fact and Recommendation on Guilty Plea before the United States Magistrate Judge” was filed in this case. In it, the court found that Movant “is fully competent and capable of entering an informed plea, that [Movant] is aware of the nature of the charges and the consequences of the plea, and that the plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense.”

Movant appeared before the United States Magistrate Judge on March 22, 2007, where the court advised Movant of his rights to remain silent, to have legal counsel appointed, and to plead not guilty and have a trial by jury. Movant had retained legal counsel and indicated that he was satisfied with his legal representation. Movant stated that he understood the elements of the offense of mail

fraud outlined by the court, the minimum and maximum penalties, and the items he was forfeiting.

The sentencing guidelines were explained to Movant. Movant stated that he understood (1) the guidelines are merely discretionary and are not binding on the court, and (2) he was giving up his right of appeal and right to file any post-conviction proceedings, except for those issues listed as reservations in his plea agreement waiver. Movant confirmed that it was his signature on the plea agreement and that he had read over it and fully understood it before signing it. Movant then stated that no promises, forces, or threats had been made to force him to plead guilty, that he had considered the consequences of his guilty plea, and that he entered into the plea freely and voluntarily. Formal declarations in open court carry with them a strong presumption of truth. *Blackledge v. Allison*, 431 U.S. 63, 74 (1977). Although a defendant's attestation of voluntariness at the time of the plea is not an absolute bar to later contrary contentions, it places a heavy burden upon him. *United States v. Diaz*, 733 F.2d 371, 373-74 (5th Cir. 1979). After stating that he was not taking any medication or under the care of a doctor at the time, Movant stated that he understood he was pleading guilty to a felony, which means he is giving up his right to vote, right to possess a firearm, right to hold public office, and the right to serve on a jury. Movant confirmed that it was his signature that appeared on the Factual Statement. He also confirmed that everything stated in the Factual Statement was true.

The court concluded that Movant was competent to plea, had able assistance of counsel, understood his trial rights and the nature of the charges against him, understood the maximum penalties that could be given, and that the sentencing guidelines were discretionary. The court found that Movant's plea was voluntary, there was a factual basis for the plea, and the ends of justice will be served by the acceptance of his plea. Movant stated that he did not have any hesitation or

reservation about his plea of guilty.

Movant's sentencing hearing was conducted on October 4, 2007. Evidence was presented concerning the amount of restitution owed and Movant's obstruction of justice through the mailing of letters to victims following his guilty plea. Additionally, several victims testified. At the conclusion of the hearing, this court sentenced Movant to 240 months of imprisonment and ordered him to pay \$2,874,469.63 in restitution.

GUILTY PLEA

In Movant's two-page motion for reconsideration, his sole complaint is that "[c]ounsel was ineffective for guiding Minor to plead guilty to a charge that he is legally innocent of and whose actions are not cognizable under any Federal statute." Any challenge to a conviction that was obtained by a guilty plea is limited to issues of voluntariness, the defendant's understanding of the charges against him, and his understanding of the consequences of the plea. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Diaz v. Martin*, 718 F.2d 1372, 1376-77 (5th Cir. 1983) ("a guilty plea is more than a confession of having acted culpably, it is itself a conviction; nothing remains but to give judgment and determine punishment.") (citing *Boykin v. Alabama*, 395 U.S. 238, 242 (1969)). If a movant challenges his guilty plea, there must be independent indicia of the likely merit of his contentions, and mere contradictions of his statements at the guilty plea will not carry his burden. *Davis v. Butler*, 825 F.2d 892, 894 (5th Cir. 1987). The validity of a guilty plea is a question of law and will be upheld on habeas review if entered into knowingly, voluntarily, and intelligently. *Montoya v. Johnson*, 226 F.3d 399, 404 (5th Cir. 2000).

While Movant's motion for reconsideration is vague and conclusory, a look at his § 2255 motion sheds some light on his assertion. In his § 2255 motion, Movant claims counsel was

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