

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-41302
Summary Calendar

TERRANCE KEITH HUNT,

Plaintiff-Appellant,

VERSUS

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Western District of Louisiana

M 90 CV 776

(June 21, 1995)

Before SMITH, Emilio M. GARZA, and PARKER, Circuit Judges.

Per curiam:*

Louisiana state inmate Terrance Keith Hunt ("Hunt"), proceeding pro se, and the U.S. Department of Justice ("Government") entered into a stipulated settlement in Hunt's action, brought pursuant to FED. R. CRIM. P. 41(e), to regain

* Local Rule 47.5 provides:
"The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession."
Pursuant to that Rule, the Court has determined that this opinion should not be published.

approximately \$46,000 in seized assets. Hunt was convicted in state court of various drug offenses in 1989. Pursuant to state seizure warrants issued in 1988, Ouachita Parish, Louisiana, authorities seized Hunt's bank accounts and proceeds from certificates of deposit ("CDs"). The money was transferred to the Federal Bureau of Investigation ("FBI"). This court remanded the portion of the district court's original final judgment which had dismissed the motion as to the Government. *Hunt v. U.S. Dep't of Justice*, 2 F.3d 96, 98 (5th Cir. 1993).¹

Pursuant to the stipulated settlement, the parties filed a joint motion of dismissal. The district court granted the dismissal. In the settlement, Hunt released the Government from further legal action arising out of the seizure of the money, and the Government agreed to return the money. After the dismissal, Hunt filed a motion to collect interest on the money held by the Government. The district court denied the motion, and this court, viewing the district court's action as a denial of a FED. R. CIV. P. 60(b)(6) motion, affirmed. *Hunt v. U.S. Dep't of Justice*, No. 94-40249 (5th Cir. Sept. 23, 1994).

Hunt filed another post-judgment motion, claiming that he had newly discovered evidence and that Assistant United States Attorney (AUSA) Richard Willis had induced the settlement by fraud. See Rule 60(b)(2) & (3). Hunt alleged that the Government sent the approximately \$46,000 to the Louisiana prison authorities, and the

¹This court affirmed the dismissal as it applied to the Louisiana defendants. See *Hunt*, 2 F.3d at 98.

authorities deposited the money into Hunt's inmate account. The next day, Louisiana seized the money under an amended seizure warrant. Hunt referred to a pending proceeding in the Middle District of Louisiana in which he is or will be contesting the propriety of those seizure proceedings.

Hunt alleged that during settlement negotiations, the AUSA disclaimed any knowledge of proceeds from a third CD. Hunt contended that a letter written by Sergeant Via² to an attorney, Steven Hansen, on February 18, 1994, indicated that Via turned over to the FBI the proceeds from the third CD. Thus, the AUSA had to know that the Government had these proceeds, and he lied to Hunt. Hunt also contended that the AUSA represented to Hunt that the money released by the Government would be "free and clear." Thus, in light of the subsequent state forfeiture proceedings, this was another instance of fraud by the AUSA. Further, Hunt contended that his agreement to release the Government from any action arising from the circumstances of the seizure and retention of the money was not done in open court to ensure a knowing release.

The Government opposed the motion. Exhibits accompanied this response, including the AUSA's affidavit in which he denied representing to Hunt that the money would be free and clear. There was also a copy of the letter written by an officer of Federal Homestead Bank explaining to Hunt that the state authorities had seized three CDs, that the bank had subtracted from the proceeds of

²Via was one of the state defendants sued by Hunt. *Hunt*, 2 F.3d at 97 n.1. This court affirmed the dismissal as against the state defendants. *Id.* at 98.

those CDs the penalty for early withdrawal and the amount owed on loans for which Hunt had used the CDs as collateral.

The magistrate judge recommended the denial of Hunt's motion. After Hunt filed objections to the report, the district court reviewed the entire record, adopted the magistrate judge's reasoning and findings, and denied the Rule 60(b) motion.

DISCUSSION

A. Rule 60 Motion

Hunt challenges the district court's denial of his Rule 60(b) motion. Hunt argues that the Government and state authorities worked together in orchestrating the subsequent seizure by state authorities of Hunt's money after it was deposited in his inmate account. He contends that this is "newly discovered evidence of fraud to effect a release from liability." Specifically, he alleges that the AUSA testified at a recent state court hearing in which Hunt was contesting the seizure of the money from his inmate account and that the AUSA stated that he assumed the state would reinstate forfeiture proceedings against the money, thus supporting Hunt's contention that the Government committed fraud to induce the settlement. Hunt's new-evidence argument collapses into his fraud argument.

This court reviews the district court's ruling on the Rule 60(b) motion for an abuse of discretion. *Aucoin v. K-Mart Apparel Fashion Corp.*, 943 F.2d 6, 8 (5th Cir. 1991). "A Rule 60(b)(3) assertion [of fraud, misrepresentation, or other misconduct] must be proved by clear and convincing evidence, and the conduct

complained of must be such as to prevent the losing party from fully and fairly presenting its case or defense." *Longden v. Sunderman*, 979 F.2d 1095, 1103 (5th Cir. 1992). By adopting and concurring with the magistrate judge's reasoning and findings, the district court viewed Hunt's motion as alleging two instances of fraud or misrepresentation by the AUSA: 1) denying knowledge of the third CD and 2) assuring Hunt that the money would be returned free and clear. The district court determined that Hunt failed to meet his burden on both allegations.

As for the first allegation of fraud -- the missing third CD, the court concluded that the allegation was not supported by the evidence. The letter from the bank to Hunt informed Hunt that the state authorities seized the deposits in Hunt's bank accounts and the proceeds for the CDs, less the penalty for early withdrawal and the amount owed on Hunt's loan with the bank. There was no money for which the seizing authorities had not accounted.

As to the second alleged misrepresentation -- money free and clear, the court relied upon the AUSA's sworn statement that he did not make any such assurances to Hunt, and upon the lack of evidence provided by Hunt indicating that Hunt had been defrauded as to the likelihood of a reseizure of assets by state authorities. A review of the evidence provided by the parties supports the court's conclusion. Hunt's exhibits covering the return of the money from the Government, its deposit into his prison account, and its seizure by state authorities as well as the AUSA's affidavit and supporting attachments support the district court's findings.

In light of the evidence, the district court did not abuse its discretion in denying the Rule 60(b) motion. *See Longden*, 979 F.2d at 1103.

b. Coercion, breach, interest.

Hunt raises several issues indirectly related to the issue discussed above. Hunt argues that the Government used coercion to induce Hunt's acceptance of the settlement stipulation by threatening Fed. R. Civ. P. 11 sanctions and by initiating settlement negotiations. In objections to magistrate judge's report, Hunt alleged that his "waiver" or agreement to the settlement was coerced, thus his waiver was involuntary. There is no indication, outside of Hunt's assertion, that the settlement was coerced.

Hunt argues that the settlement agreement was breached by the Government because the money was received by state prison authorities on February 1, but was not deposited until February 22. Hunt views this as governmental action which assisted the state authorities in reseizing the money. Despite Hunt's perception of these facts, the Government, in accordance with the settlement agreement, returned the money to Hunt.

Hunt argues that state authorities committed fraud by delaying the deposit of the money into Hunt's account for 21 days, which provided the time to seize the money again. Hunt is attempting to litigate the propriety of the subsequent seizure of money. The action by state authorities does not disturb the district court's dismissal, pursuant to the settlement stipulation, of Hunt's claim

against the Government.

Hunt attempts to argue the propriety of the district court's denial of Hunt's motion for interest on the money while it was held by the Government. This issue is foreclosed by the earlier opinion by this court on Hunt's appeal of that district court ruling. See *Hunt*, No. 94-40249 (5th Cir. Sept. 23, 1994).

CONCLUSION

For the foregoing reasons, the district court's order denying the Rule 60(b) motion is affirmed.