

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

TOMMY R. MCGUIRE,

Petitioner,

v.

Case No. 3:19-cv-347-J-32JRK

SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS,
et. al.,

Respondents.

ORDER

Petitioner, an inmate of the Florida penal system, initiated this case by filing a “Relief from Judgment Petition for New or Independent Action” (Doc. 1; Petition) in the United States District Court for the Southern District of New York. That court transferred the case here.

Petitioner seeks relief from the judgment entered by this Court in Case No. 3:02-cv-687-J-32JRK. He asserts that there is newly discovered evidence (his defense attorney’s 2005 response to a bar complaint) that his attorney perpetrated a fraud on the state trial court and the prosecutor “actively aided and abetted in the fraud.” Petitioner has previously raised this issue multiple times in this Court and in others. He has filed post-judgment motions in Case No. 3:02-cv-687-J-32JRK; four independent actions in this Court (Case Nos. 3:18-cv-576-J-32MCR; 3:16-cv-1336-J-32JRK; 3:16-cv-508-J-32JBT; 3:11-cv-521-J-32MCR); an independent action petition in the United States District Court for the Northern District of Florida (Case No. 1:08-

cv-128-MP-AK); and an independent action petition in the Southern District of Florida (Case No. 1:14-cv-20167-KMM). Moreover, the Court takes judicial notice of Case No. 3:05-mc-44-J, in which the Eleventh Circuit Court of Appeals denied Petitioner's application to file a second or successive petition raising the same claim that Petitioner attempts to present in the instant Petition.

This Court dismisses the Petition on several grounds. First, the case is dismissed as a malicious abuse of the judicial process because Petitioner has raised this same issue multiple times to no avail. Additionally, insofar as Petitioner attempts to raise an independent action pursuant to Federal Rule of Civil Procedure 60(b), the Court maintains that Petitioner's allegations of fraud do not meet the criteria for an independent action as set forth in Galatolo v. United States, 394 F. App'x 670, 672 (11th Cir. 2010). See McGuire v. Sec'y Dept. of Corr., No. 3:18-cv-576-J-32MCR (M.D. Fla. June 1, 2018). Thus, this action is construed as a second or successive federal habeas petition, and the Eleventh Circuit has not granted Petitioner leave to file a second or successive habeas petition. As such, the Petition is dismissed for lack of subject matter jurisdiction. See, e.g., Franqui v. Florida, 638 F.3d 1368, 1371 (11th Cir. 2011).

Accordingly, it is

ORDERED AND ADJUDGED that Petitioner's "Relief from Judgment Petition for New or Independent Action" (Doc. 1) is **DISMISSED WITH PREJUDICE**. The Clerk shall terminate all pending motions, enter judgment dismissing this action with prejudice, and close this case.

DONE AND ORDERED in Jacksonville, Florida this 4th day of April 2019.



TIMOTHY J. CORRIGAN
United States District Judge

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C: Tommy McGuire, #542512