

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 00-40104-01/02-RDR

WILLIAM LEONARD PICKARD
and CLYDE APPERSON,

Defendants.

MEMORANDUM AND ORDER

This matter is presently before the court upon the following motions: (1) defendants' motion to expand the record (Doc. # 611); (2) defendants' motion for disclosure of limited FBI records (Doc. # 612); (3) defendants' Rule 60(b) motion to correct defects in the district court proceedings concerning unaddressed claims and uncontested motions (Doc. # 637); (4) defendants' Rule 60(b)(2) and 60(b)(3) motions based on newly discovery evidence (Doc. # 639); and (5) government's motion to dismiss defendants' Rule 60(b) motions (Doc. # 640). Having carefully reviewed all of these motions, the court is now prepared to rule.

This case has a long and complicated history. The defendants were convicted of conspiracy to manufacture lysergic acid diethylamide (LSD) in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846, and one count of possession with intent to distribute LSD in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A). Apperson was sentenced to thirty years' imprisonment,

and Pickard received a life sentence. See United States v. Pickard, 298 F.Supp.2d 1140 (D.Kan. 2003); United States v. Apperson, 298 F.Supp.2d 1149 (D.Kan. 2003). The convictions and sentences were affirmed by the Tenth Circuit. United States v. Apperson, 441 F.3d 1162 (10th Cir. 2006), cert. denied, 549 U.S. 1117 (2007) and 549 U.S. 1150 (2007). The defendants then filed motions to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. These motions were denied on April 6, 2009. Following the court's decision, the defendants filed the motions noted above as Doc. ## 611 and 612. The defendants then filed notices of appeal. On July 2, 2009, the court denied defendants' motions for certificates of appealability. The defendants subsequently filed the motions noted above as Doc. ## 637 and 639. The government responded with the motion noted above as Doc. # 640. Given the pending § 2255 motions, the court declined to consider any of these matters. On October 5, 2010, the Tenth Circuit denied defendants' certificate of appealability on their § 2255 motions and dismissed their appeals. United States v. Pickard, 2010 WL 3862877 (10th Cir. 2010).

In the motion to expand the record, the defendants sought to add certain documents to the appellate record that they contended were newly discovered. In the motion for disclosure of limited FBI records, the defendants sought to have the government provide them with certain documents so they could add them to their applications

for certificates of appealability on their § 2255 motions. Based upon the recent decision of the Tenth Circuit, the court finds that these motions are moot.

In the motion to dismiss, the government contended that the court should dismiss the defendants' Rule 60(b) motions due to the pendency of the appeal on the § 2255 motions. Without considering whether this position is correct, the court now finds that the government's motion is moot.

The Rule 60(b) motions filed by the defendants remain pending. The court directs the government to file a response to these motions within fourteen (14) days of the date of this order.

IT IS THEREFORE ORDERED that defendants' motion to expand the record (Doc. # 611) be hereby denied as moot.

IT IS FURTHER ORDERED that defendants' motion for disclosure of limited FBI records (Doc. # 612) be hereby denied as moot.

IT IS FURTHER ORDERED that the government's motion to dismiss Rule 60(b) motions (Doc. # 640) be hereby denied as moot.

IT IS FURTHER ORDERED that the government file a response to the defendants' Rule 60(b) motions (Doc. ## 637 and 639) within fourteen (14) days of the date of this order.

IT IS SO ORDERED.

Dated this 10th day of November, 2010 at Topeka, Kansas.

s/Richard D. Rogers
United States District Judge