

United States Court of Appeals For the First Circuit

No. 09-1559

ALFRED W. TRENKLER

Petitioner - Appellant

v.

UNITED STATES

Respondent - Appellee

Before

Boudin, Lipez and Thompson,
Circuit Judges.

JUDGMENT

Entered: June 8, 2010

Appellant Alfred Trenkler challenges the district court's denial of his request for relief under a second § 2255 petition. Trenkler was convicted for his part in a fatal bombing with a device intended for the vehicle of a co-conspirator's father. He claims that newly-discovered evidence entitles him to exoneration or a new trial. The district court disagreed, and we conclude that its reasoning was sound. New evidence does not by itself permit a new trial; rather, a showing of very powerful new evidence meeting the standard of section 2255(h) can permit a second petition which must then itself establish a violation of law, typically, one of the constitutional errors that is cognizable on habeas.

The district court took the view that the existence of fingerprint evidence on adhesive tape was known to Trenkler's defense expert at the time of trial, so it is imputable to Trenkler and his counsel regardless of Trenkler's actual or subjective awareness. We need not resolve this interesting question because even if we assume that a fingerprint did exist on the tape, nothing whatsoever indicates that it would tend to exculpate Trenkler, and the only obvious constitutional basis for a claim--even assuming a second petition were permissible under section 2255(h)--is Brady v. Maryland, 373 U.S. 83 (1963), which requires a showing of evidence substantially favorable to the defendant. United States v. Bagley, 473 U.S. 667, 682 (1985) (Brady claimant must show "a

reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different").

The remaining issues are also of little help to Trenkler. The existence of fingerprint evidence on the alleged target vehicle was known to Trenkler's counsel and is thus imputable. The prosecution's mere silence cannot be reasonably construed as a deceptive or misleading representation about the nature or import of the unidentified prints. Discrepancies in the evidence about technical features of the explosive device were discoverable by the defense at the time of trial, so new realizations on the part of Trenkler as a result of *post hoc* review of the litigation files will not satisfy § 2255(h)(1). Trenkler's impugment of testimonial trial evidence, based on doubtful claims of recantation and uncorroborated suspicions of inducement, can fare no better. Finally, whatever significance might attach to evidence of speed bumps in the travel path of the alleged target vehicle, it, too, was a matter discoverable at the time of trial, and is not amenable to § 2255(h)(1).

The district court's estimate of Trenkler's "actual innocence" claim is also sound.

The judgment is **affirmed**.

By the Court:

/s/ Margaret Carter, Clerk

cc:

Alfred W. Trenkler
Randall E. Kromm
James Francis Lang