

subsections (1) through (3) of Rule 60(b). Fed. R. Civ. P. 60(c). But D’Amario says that this fourth motion is based on two subsections that are not subject to the one-year time bar, namely, (4) (“judgment is void”) and (6) (“any other reason that justifies relief”).¹ There is a “reasonable time” limit even on these subsections, and by now in 2008 D’Amario has exceeded that limit as well. In any event, D’Amario has no support for his argument that the original judgment is void under subsection (4). Subsection (6), on the other hand, is a catchall provision that is subject to some interpretation, but it cannot assist D’Amario. It is apparent that D’Amario is trying to present what he considers to be new evidence of his original bias claim. He tries to avoid the flat one-year limitation period applicable to such a subsection (2) (“newly discovered evidence”) claim: he says that the evidence upon which he now relies is not “newly discovered,” but was “always known” to him; it was, however, “unavailable” to him previously, he says, blaming the Bureau of Prisons and United States Marshals Service for their custody of his legal papers. Mem. Supporting Mot. for Relief From Judgment at 1 (Docket Item 15). The argument is creative, but unpersuasive. This is, in fact, a newly discovered evidence claim under Rule 60(b)(2) and is subject to the one-year limit. Moreover, D’Amario is simply repeating arguments rejected previously, and the repetition has become frivolous in light of the repeated rejections.

Accordingly, the motion for relief from judgment is once again **DENIED**. Moreover, in light of the continuing frivolous filings, I place Arthur D’Amario, III on

¹ Subsection (5) is inapplicable, dealing largely with a satisfied, released, discharged, reversed or vacated judgment. Fed. R. Civ. P. 60(b)(5).

NOTICE that filing restrictions “may be in the offing.” Cok v. Family Court of Rhode Island, 985 F.2d 32, 35 (1st Cir. 1993). This represents the “cautionary order” of which Cok speaks. Groundless and inappropriate filings will not be tolerated.

I expect that D’Amario will file an application for certificate of appealability. Thus, I treat this Rule 60(b) motion as including that request. Because no substantial question would be presented for decision on appeal, I deny the request.

SO ORDERED.

DATED THIS 5TH DAY OF JUNE, 2008

/s/D. Brock Hornby
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

**U.S. DISTRICT COURT
DISTRICT OF MAINE (PORTLAND)
CIVIL DOCKET FOR CASE #: 2:05cv216 (DBH)**

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