



United States of America v. Holzer et al

2015 | Cited 0 times | M.D. Florida | April 30, 2015

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

UNITED STATES OF AMERICA v. CASE NO: 8:01-cr-56-T-30TBM JOSHUA BOYER

ORDER THIS CAUSE comes before the Court upon the Defendant's Motion for New Trial Pursuant to Federal Rule of Criminal Procedure 33(b)(1) (Dkt. #356) and the Government's Response (Dkt. #361). Upon review and consideration, the Court determines Defendant's motion should be denied.

Defendant Boyer files the motion pursuant to Rule 33(b)(1), which provides: Any motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty. If an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands the case. Boyer's motion will be denied because more than three (3) years have passed since the jury's guilty verdicts in this case. The jury rendered its verdicts against Boyer and his co-defendants on July 30, 2001. And, absent some provision creating or continuing its jurisdiction, the Court lacks authority to entertain Boyer's request for relief. See *United States v. Diaz-Clark*, 292 F. 3d 1310, 1316-18 (11th Cir. 2002); *United States v. Williams*, 158 F. 3d 736, 740 (3d Cir. 1998) ("courts do not have freewheeling powers to amend six- year old judgments in criminal cases"). Accordingly, it is ORDERED AND ADJUDGED that:

1. Defendant's Motion for New Trial Pursuant to Federal Rule of Criminal Procedure 33(b)(1) (Dkt. #356) is DENIED.

DONE and ORDERED in Tampa, Florida, this 30th day of April, 2015.

Copies furnished to: Counsel/Parties of Record S:\Even\2001\2001 criminal\01-cr-56 Boyer deny new trial 356.docx

