

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Criminal Action No. 02-64 GMS
)
 ROBERT KOSSAK and)
 ANTHONY PANARO,)
)
 Defendants.)

MEMORANDUM AND ORDER

I. INTRODUCTION

On July 29, 2002, Robert Kossak (“Kossak”) filed a motion to dismiss the indictment and a motion for severance. The court held a hearing on these motions on December 2, 2002. After hearing oral argument on the motion to dismiss the indictment, the court denied this motion from the bench. It reserved judgment on Kossak’s motion for severance. On December 4, 2002, the court issued an order denying this motion as well.

Presently before the court is Kossak’s motion for reconsideration of these rulings.

II. STANDARD OF REVIEW

A motion to reconsider a ruling in a criminal case is used only to correct manifest errors of law or to present newly discovered evidence. *See United States v. Garcia*, 2000 WL 654374, at *1 (D. Del. April 5, 2000). In order to prevail, the movant must demonstrate an intervening change in the law, new evidence not previously available, or the need to correct a clear error of law or fact, or to prevent manifest injustice. *See id.*

III. DISCUSSION

In his motion for reconsideration, Kossak states that the court denied both his motions in its

December 4, 2002 order. However, the court addressed only the motion for severance in that order. Furthermore, Kossak's motion for reconsideration is based entirely on the sufficiency of Anthony Panaro's ("Panaro") affidavit. The court denied Kossak's motion to dismiss the indictment on the ground that federal prosecutors have no duty to present exculpatory evidence to the Grand Jury. Thus, while Kossak's motion purports to request reconsideration of the court's ruling on his motion to dismiss, he fails to actually address this ruling. The court therefore concludes that Kossak has not met his burden of demonstrating the need for reconsideration of this decision.

As a basis for requesting reconsideration of the court's ruling on his motion for severance, Kossak now offers an allegedly more detailed affidavit from Panaro regarding his knowledge of the allegations contained in the Indictment. He offers no explanation as to why this affidavit was not presented prior to the court entertaining oral argument and issuing a written ruling on the severance motion.

Therefore, because Kossak has failed to demonstrate a change in the controlling law, clear error, newly discovered evidence, or manifest injustice, the court will deny his motion for reconsideration.

IV. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. Kossak's Motion for Re-argument and/or Reconsideration (D.I. 37) is DENIED.

Dated: January 21, 2003

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE