UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-1522

EDWIN APONTE,
Appellant

v.

SUPERINTENDENT SMITHFIELD SCI;
DISTRICT ATTORNEY PHILADELPHIA;
ATTORNEY GENERAL PENNSYLVANIA

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2-15-cv-00561)
District Judge: Honorable Lawrence F. Stengel

SUR PETITION FOR REHEARING

Present: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., VANASKIE, SHWARTZ, KRAUSE, and RESTREPO, *Circuit Judges*

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the

panel and the Court en banc, is denied.

BY THE COURT,

s/ Cheryl Ann Krause
Circuit Judge

Dated: October 19, 2017

kr/cc: Edwin Aponte
Jennifer O. Andress, Esq.

DLD-310 July 20, 2017

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **17-1522**

EDWIN APONTE, Appellant

VS.

SUPERINTENDENT SMITHFIELD SCI, ET AL.

(E.D. Pa. Civ. No. 2-15-cv-00561)

Present: CHAGARES, VANASKIE, and KRAUSE, Circuit Judges

Submitted is Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1);

in the above-captioned case.

Respectfully,

Clerk

MMW/AS/kr

ORDER

The foregoing application for a certificate of appealability is denied. Slack v. McDaniel, 529 U.S. 473, 484 (2000). Jurists of reason would not disagree that Aponte's claims that state post-conviction counsel provided ineffective assistance and that the state court erred in its evidentiary rulings are not cognizable on habeas review. See 28 U.S.C. § 2254(i); Estelle v. McGuire, 502 U.S. 62, 67 (1991). Jurists of reason would not disagree that the trial court's refusal to instruct the jury on self-defense did not constitute a Due Process violation. Cupp v. Naughten, 414 U.S. 141, 147 (1973); Albrecht v. Horn, 485 F.3d 103, 129 (3d Cir. 2007). Jurists of reason would not disagree that Aponte's constitutional rights were not violated when the trial judge declined to grant a mistrial based on Aponte's brother's comment to a juror or based on the prosecutor's closing argument. Darden v. Wainwright, 477 U.S. 168, 181 (1986); United States v. Vega, 285 F.3d 256, 266 (3d Cir. 2002). Aponte has not arguably shown that no rational juror could

have convicted him based on the evidence presented at trial. Jackson v. Virginia, 443 U.S. 307, 319 (1979). For substantially the reasons provided by the District Court, Aponte has not arguably shown that trial or appellate counsel performed deficiently. Strickland v. Washington, 466 U.S. 668, 687-88 (1984). Finally, Aponte has not arguably shown that cumulative errors justify relief. Collins v. Sec'y of Pa. Dep't of Corr., 742 F.3d 528, 542 (3d Cir. 2014).

By the Court,

s/ Cheryl Ann Krause
Circuit Judge

Dated: August 30, 2017

kr/cc: Edwin Aponte
Jennifer O. Andress, Esq.

A True Copy
Marcia M. Waldron

Marcia M. Waldron, Clerk
Certified order issued in lieu of mandate.