

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3828

JOSE A. RIVERA-QUINONES,
Appellant

v.

COMMONWEALTH OF PENNSYLVANIA

No. 17-3833

IN RE: JOSE A. RIVERA-QUINONES,
Petitioner

(D.C. Civ. No. 5-17-cv-04769)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., VANASKIE, SHWARTZ, KRAUSE,

BLD-138

March 9, 2018

JOSE RIVERA-QUINONES, Appellant
VS.

COMMONWEALTH OF PENNSYLVANIA
C.A. No. 17-3828 & 3833

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ORDER

The foregoing request for a certificate of appealability is denied. Jurists of reason would not dispute that the District Court lacked jurisdiction to consider Rivera-Quinones' petition, his second, because he did not obtain this Court's permission to file it. See 28 U.S.C. §2244(b)(3)(A); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Burton v. Stewart, 549 U.S. 147, 153 (2007).

Rivera-Quinones' application under 28 U.S.C. §2244(b) for permission to file a second or successive habeas petition pursuant to 28 U.S.C. § 2254 is denied. He has failed to make a *prima facie* showing that his claims rely on newly discovered evidence or "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." See 28 U.S.C. § 2244(b)(2).

By the Court,

s/ L. Felipe Restrepo
Circuit Judge

Dated: March 13, 2018

CJG/cc: Jose A. Rivera-Quinones
Susan E. Moyer, Esq.



A True Copy:



Patricia S. Dodsweit, Clerk
Certified Order Issued in Lieu of Mandate

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSE RIVERA-QUINONES, :
Petitioner :
v. : CIVIL ACTION NO. 17-CV-4769
COMMONWEALTH OF PENNSYLVANIA, :
Respondent : **FILED**
NOV 17 2017
KATE EARNOLI, CLERK
S/

ORDER

AND NOW, this **17th** day of November, 2017, upon consideration of the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 filed by pro se petitioner, Jose Rivera-Quinones, and it appearing that the Petition is a successive petition for habeas corpus relief which attacks his May 2008 conviction for burglary, criminal trespass, attempted homicide and other offense, **IT IS HEREBY ORDERED** that the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 filed by pro se petitioner, Jose Rivera-Quinones, is **DISMISSED** **WITHOUT PREJUDICE** to pro se petitioner's right to seek authorization from the Court of Appeals for the Third Circuit to file a second or successive petition pursuant to 28 U.S.C. § 2244(b)(3)(A).

IT IS FURTHER ORDERED that a certificate of appealability will not issue because reasonable jurists would not debate the propriety of this Court's procedural ruling with respect to petitioner's claims. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The decision of the Court is based on the following:

1. On August 27, 2013, pro se petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 in Civil Action No. 13-CV-5071 which attacked his May 2008 conviction;

2. On August 6, 2014, this Court dismissed that Petition as untimely filed;
3. The instant Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 asserts claims arising out of the same conviction as was addressed in pro se petitioner's prior habeas corpus proceeding. 28 U.S.C. § 2244(b)(3)(A) requires that pro se petitioner obtain authorization from the Court of Appeals for the Third Circuit before this Court may consider a successive petition for writ of habeas corpus; and,
4. The Clerk of Court shall MARK this case **CLOSED**.

Jan E. Dubois
JAN E. DUBOIS, J.

BLD-138

March 9, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **17-3828 & 3833** (Consolidated)

JOSE RIVERA-QUINONES, Appellant

VS.

COMMONWEALTH OF PENNSYLVANIA

(E.D. Pa. Civ. No. 5-17-cv-04769)

Present: RESTREPO, BIBAS and NYGAARD, Circuit Judges

Submitted are:

- (1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1);
- (2) Petitioner's application pursuant to 28 U.S.C. § 2244(b) to file a second or successive petition under 28 U.S.C. § 2254;
- (3) Appellant's "Memorandum of Law;" and
- (4) Respondent's Response

in the above-captioned case.

Respectfully,

Clerk

RESTREPO, BIBAS, and NYGAARD,* Circuit Judges

The petition for rehearing filed by appellant in the above-entitled cases 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/ L. Felipe Restrepo
Circuit Judge

Date: May 16, 2018

CJG/cc: Susan E. Moyer, Esq.
Jose A. Rivera-Quinones

* Judge Nygaard's vote is limited to panel rehearing only.