

ALD-091

January 4, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **17-3240**

UNITED STATES OF AMERICA

VS.

MAURICE NICHOLS, Appellant

(E.D. Pa. Crim. No. 2-09-cr-00730-001)

Present: MCKEE, VANASKIE and SCIRICA, 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

ORDER

Nichols' request for a certificate of appealability is denied. The District Court properly construed his July 5, 2016 motion as a successive petition under 28 U.S.C. § 2255 because the motion sought to attack the substance of the District Court's resolution of his ineffective assistance of counsel claim on the merits. See Gonzalez v. Crosby, 545 U.S. 524, 53-32 (2005). Jurists of reason would agree that the District Court lacked jurisdiction to consider his successive petition for relief absent this Court's authorization. See 28 U.S.C. §§ 2244(b)(3)(A), 2255(h); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

By the Court,

s/ Theodore A. McKee
Circuit Judge

Dated: April 6, 2018
sb/cc: Maurice Nicholas

Lizabeth F. Abrams, Esq.



A True Copy:

Patricia S. Dodsweat

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

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

UNITED STATES OF AMERICA : CRIMINAL ACTION

v. : .

MAURICE NICHOLS : NO. 09-730
a/k/a Michael Peterson

ORDER

On July 5, 2016, Defendant filed a Rule 60(b) motion requesting this Court to vacate its previous Order entered July 23, 2013 denying Defendant's Motion Under 28 U.S.C. § 2255, due to alleged procedural errors, and to grant an evidentiary hearing.

When the Court had not ruled on this, Defendant sought a writ of mandamus from the Third Circuit which was denied by Order dated September 7, 2017. Having reviewed the record of this case, this Court will now **DENY** the Motion under 60(b) filed on July 5, 2016 (ECF 94), principally because it is a second or successive petition. The Court notes that on July 23, 2013, this Court denied Nichols' motion under 28 U.S.C. § 2255 and the Third Circuit denied a certificate of appealability.

This Court now **DENIES** a certificate of appealability on the Order denying the Rule 60(b) petition.

BY THE COURT:

Michael M. Baylson

Dated: 09/13/17

Michael M. Baylson, U.S.D.J.