

APPENDIX

A

WAS NOT A RE-HEARING FILED

APPENDIX

B

CLD-224

May 31, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **18-1403**

JORGE CINTRON, Appellant

VS.

SUPERINTENDENT GRATERFORD SCI; ET AL.

(E.D. Pa. Civ. No. 2-05-cv-03478)

Present: CHAGARES, GREENAWAY, Jr., and FUENTES, Circuit Judges

Submitted is Appellant's application for a certificate of appealability under 28 U.S.C. § 2253(c)(1) in the above-captioned case.

Respectfully,
Clerk

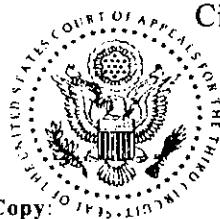
ORDER

Appellant's request for a certificate of appealability is denied because reasonable jurists would not debate the District Court's decision to deny his Fed. R. Civ. P. 60(b) motion or his subsequent motion for reconsideration. See Slack v. McDaniel, 529 U.S. 473, 484 (2000); Pridgen v. Shannon, 380 F.3d 721, 727 (3d Cir. 2004). In particular, Cintron's reliance on Dennis v. Sec'y, Pa. Dep't of Corr., 834 F.3d 263 (3d Cir. 2016), is misplaced, as it does not undermine the District Court's determination that his habeas petition filed pursuant to 28 U.S.C. § 2254 was untimely filed. See also Cox v. Horn, 757 F.3d 113, 123 (3d Cir. 2014) (a change in decisional law by itself will "*rarely* constitute the extraordinary circumstances required for relief under Rule 60(b)(6).") (emphasis in original) (citation omitted).

By the Court,

s/Michael A. Chagares
Circuit Judge

Dated: June 20, 2018
ARR/cc: JC; MCK



A True Copy:

Patricia S. Dodszuweit

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

APPENDIX

C

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

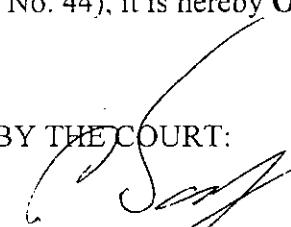
JORGE CINTRON, :
Petitioner :
v. : CIVIL ACTION
: NO. 05-3478
DAVID DIGUGLIELMO, et al. :
Respondents :
:

FILED FEB - 1 2018

ORDER

AND NOW, this 31st day of January, 2018, upon consideration of Petitioner's Motion for Relief from Judgment Pursuant to Fed. R. Civ. P. 60(b) (Dkt No. 44), it is hereby ORDERED that said Motion is DENIED.¹

BY THE COURT:


C. Darnell Jones, II J.

¹ The Writ for Habeas Corpus underlying the present Motion was dismissed as untimely on July 7, 2006 (Dkt No. 10.) Since then, Petitioner has filed no less than six motions for relief from judgment pursuant to Rule 60(b), the most recent of which the Court considers herein. (Dkt Nos. 20, 23, 31, 33, 39, and 44.)

The doctrine of equitable tolling can save an untimely petition – upon a showing of “extraordinary circumstances” that prevented timely filing. Holland v. Florida, 560 U.S. 631, 645 (2010). Petitioner appears to acknowledge that his Petition was untimely filed, but has not alleged – in any one of the six Motions for Reconsideration – any facts that would explain, much less excuse, the delay. Instead, most of Petitioner’s Motions primarily discuss what Petitioner believes to be the deficiencies in the prosecution’s case at Petitioner’s criminal trial. In the instant Motion, Petitioner seems to argue the recent Third Circuit case, Dennis v. Sec’y, Pennsylvania Dep’t of Corr., 834 F.3d 263 (3d Cir. 2016), entitles him to relief – a change in argument from his previous Motions. Petitioner fails to explain how Dennis relates to the untimeliness of his Petition, and this Court finds no other basis upon which Dennis grants the relief sought.

Petitioner also makes repeated reference to a “miscarriage of justice.” (Dkt No. 44, p. 3-5.) While a fundamental miscarriage of justice can overcome a procedural bar like the one at issue here, McQuiggin v. Perkins, 569 U.S. 383, 392 (2013), Petitioner fails to allege sufficient facts to support the application of this very narrow exception. The miscarriage of justice exception applies only where “new evidence shows it is more likely than not that no reasonable juror would have convicted the petitioner.” Id. at 395 (citing Schulp v. Delo, 513 U.S. 298, 329 (1995)) (internal quotations omitted). Petitioner has yet to present evidence that would entitle him to relief under this extraordinary exception.

As Petitioner fails to present a case for equitable tolling and fails to demonstrate the applicability of the miscarriage of justice exception, the Court sees no basis upon which to grant Petitioner’s sixth Motion for Reconsideration.

ENTD FEB - 2 2018

**Additional material
from this filing is
available in the
Clerk's Office.**