

# APPENDIX

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# EXHIBIT A

ORDER 3rd CIRCUIT  
May 4, 2018

ALD-143

March 9, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 17-3710

UNITED STATES OF AMERICA

VS.

BERNARD J. BAGDIS, Appellant

(E.D. Pa. Crim. No. 2-07-cr-00730-001)

Present: MCKEE, VANASKIE and SCIRICA, 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

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ORDER

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The foregoing request for a certificate of appealability is denied. Appellant's "Timely Resubmittal of Motion under 28 U.S.C. § 2255(f)(4)," which we understand as a motion brought pursuant to Fed. R. Civ. P. 60(b), *see Ahmed v. Dragovich*, 297 F.3d 201, 208-09 (3d Cir. 2002), contains both an attack on the manner in which the earlier habeas judgment was procured as well as an attack on his original conviction. *See Gonzalez v. Crosby*, 545 U.S. 524, 530-32 (2005); *Pridgen v. Shannon*, 380 F.3d 721, 727 (3d Cir. 2004). To the extent that Appellant alleged that the District Court improperly concluded that his § 2255 motion was untimely filed, a certificate of appealability is not warranted because he failed to make a substantial showing, see 28 U.S.C. § 2253(c), that the limitations period should have been extended under § 2255(f)(4). To the extent that Appellant seeks to attack his underlying conviction, his Rule 60(b) motion is properly viewed as an unauthorized second or successive 28 U.S.C. § 2255 motion. *See Pridgen*,

380 F.3d at 727. The District Court did not err in rejecting such an attack. *Robinson v. Johnson*, 313 F.3d 128, 139-40 (3d Cir. 2002).

By the Court,

s/ Thomas I. Vanaskie  
Circuit Judge

Dated: May 4, 2018  
ARR/cc: BJB; DJI



A True Copy:

*Patricia S. Dodszeit*

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

# EXHIBIT B

ORDER 3rd CIRCUIT  
Sur Petition for Rehearing

July 3, 2018

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 17-3710

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UNITED STATES OF AMERICA

v.

BERNARD J. BAGDIS,  
a/k/a Pat Davis  
a/k/a Frank Benjamin  
a/k/a Adam Samuels  
a/k/a Chris White  
a/k/a Jay

BERNARD J. BAGDIS,  
Appellant

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(D.C. Civil No. 2-07-cr-00730-001)

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SUR PETITION FOR REHEARING

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

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\* Judge Scirica's vote is limited to panel rehearing.

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/ Thomas I. Vanaskie  
Circuit Judge

Dated: July 3, 2018

NMR/cc: Mr. Bernard J. Bagdis  
David J. Ignall, Esq.

# EXHIBIT C

Notice of Appeal

December 13, 2017



**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
CRIMINAL DIVISION**

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**United States of America,**

**Plaintiff/Respondent :**

**v. :**

**No. 2:07-cr-00730-JCJ**

**Bernard J. Bagdis,**

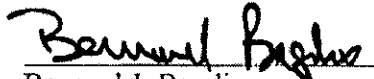
**Defendant/Movant :**

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**NOTICE OF APPEAL**

I hereby appeal the Order of the District Court dated October 17, 2017, [Docket # 690], dismissing my Motion to Vacate, Set Aside or Correct Sentence by a Person in Custody, filed under 28 U.S.C. §2255(f)(4), as a “second or successive motion”. I further appeal the denial of my Motion to Amend filed under Rule 15(a) as well as the denial of my Motion for Relief filed under Rule 60(b).

I have also filed an APPLICATION for a CERTIFICATE OF APPEALABILITY under LAR 22.1(a) with the Court of Appeals for the Third Circuit.

  
Bernard J. Bagdis, *pro se*  
Defendant/Movant

Reg. No. 62725-066  
In custody of the Federal Bureau of Prisons  
Residential Reentry Management Facility  
Philadelphia, PA 19106

c/o 1625 North Wales Road  
Norristown, PA 19403

Date: December 13, 2017

# EXHIBIT D

Letter to Clerk 3rd CIRCUIT

July 17, 2018

**Bernard J. Bagdis  
Reg. No. 62725-066  
1625 North Wales Road  
Norristown, PA 19403**

July 17, 2018

Certified Mail # 7016 0910 0001 3152 8488

Patricia S. Dodszuweit, Clerk  
United States Court of Appeals  
for the Third Circuit  
21400 United States Courthouse  
601 Market Street  
Philadelphia, PA 19106-1790

RE: Appeal 17-3710, Unanswered/Overlooked Issues

Dear Ms. Dodszuweit:

On October 17, 2017, in case 2-07-cr-00730-001, Judge J. Curtis Joyner of the District Court for the Eastern District of Pennsylvania issued a multi-part Order, dismissing my Motion filed under 28 U.S.C. §2255; dismissing, without comment or explanation, two separate Motions I filed, under Rule 15(a) and Rule 60(b) of the Federal Rules of Appellate Procedure; and denying a Certificate of Appealability for my §2255 motion. [Docket #690] A copy of the Order is included as Attachment 1.

On December 13, 2017, I filed a timely Notice of Appeal, *separately and specifically appealing the dismissal of my §2255 motion, as well as appealing the denial of my Rule 15(a) motion and denial of my Rule 60(b) motion*. I also included Notice of my Application for a Certificate of Appealability with the Third Circuit. [Docket #693] A copy of that Notice is included as Attachment 2.

On December 19, 2017, my Appeal was docketed at the Third Circuit, and assigned File #17-3710.

On January 10, 2018, I filed a timely Application for a Certificate of Appealability with the Third Circuit, a necessary pre-requisite for appealing the dismissal of the §2255 motion only.

On May 4, 2018, a panel of the Third Circuit classified my resubmitted original §2255 Motion as a new Rule 60(b) Motion, treated it as "an unauthorized second or successive 28 U.S.C. § 2255 motion", and denied my request for a certificate of appealability for that new and recharacterized §2255 motion. A copy of that decision is included as Attachment 3.

The decision of the panel did not address the separate part of my appeal of the district court's order that denied my Rule 15(a) motion [Docket 685] nor did it address the denial of my *separate* Rule 60(b) motion [Docket 686]. Since the denial of each of these motions is entitled to a appeal of right under Rule 4, and the appeals do not require a Certificate of Appealability to issue before the appeal can proceed, and no briefing schedule has been issued for the appeal of the two separate motions that were denied by the district court, it appears that these two motions may have simply been overlooked by the clerk's office.

July 16, 2018  
Re: Appeal 17-3710  
page 2 of 2

On June 13, 2018, I also filed a Petition for Reconsideration which was denied on July 3, 2018.

My appeal of the denial of the Rule 15(a) motion as well as my appeal of the denial of the *separate* Rule 60(b) motion *have never even been addressed by the Third Circuit, let alone been resolved.*

Your office did not and has not issued any briefing schedule for those two elements of my original appeal - denial of the Rule 15(a) motion and denial of the *separate* Rule 60(b) motion - which were specifically identified in my notice of appeal. Both motions were denied in Judge Joyner's order of October 17, 2017, but these motions are entitled to an appeal of right under Rule 4. Perhaps this was just a simple administrative oversight that can be easily remedied.

I request that you issue a briefing schedule for appeal of the denial of my *separate* Rule 60(b) motion [Docket 686]. In the interest of judicial economy and efficiency, I will withdraw the my Rule 15(a) motion [Docket 685] because it will be subsumed by proper consideration of the Rule 60(b) motion.

Thank you for your kind attention to this matter.

Sincerely,

Bernard Bagdis  
Reg # 62725-066  
1625 North Wales Road  
Norristown, PA 19403

Encl: Attachment 1 District Court Order.....**EXHIBIT F herein**  
Attachment 2 Notice of Appeal.....**EXHIBIT C herein**  
Attachment 3 Panel Decision 17-3710.....**EXHIBIT A herein**

# EXHIBIT E

SUPREME COURT  
Docket 15-47

No. 15-47

Title: Bernard J. Bagdis, Petitioner

v.

United States

Docketed: July 13, 2015

Linked with 14A1078

Lower Ct: United States Court of Appeals for the Third Circuit

Case Nos.: (13-4438)

Decision Date: November 6, 2014

Rehearing Denied: February 10, 2015

~~~Date~~~ ~~~~~Proceedings and Orders~~~~~

Apr 6 2015 Application (14A1078) to extend the time to file a petition for a writ of certiorari from May 11, 2015 to July 10, 2015, submitted to Justice Alito.

Apr 21 2015 Application (14A1078) granted by Justice Alito extending the time to file until July 10, 2015.

Jul 9 2015 Petition for a writ of certiorari filed. (Response due August 12, 2015)

Jul 27 2015 Waiver of right of respondent United States to respond filed.

Jul 29 2015 DISTRIBUTED for Conference of September 28, 2015.

Aug 27 2015 Application (15A264) for Release, submitted to Justice Alito.

Sep 3 2015 Application (15A264) denied by Justice Alito.

Oct 5 2015 Petition DENIED.

Oct 29 2015 Petition for Rehearing filed.

Nov 4 2015 DISTRIBUTED for Conference of November 24, 2015.

Nov 30 2015 Rehearing DENIED.

~~Name~~~~~

~~~~~Address~~~~~

~~Phone~~~

**Attorneys for Petitioner:**

Bernard Bagdis

#62725-066

FPC Schuylkill

# EXHIBIT F

## ORDER

United States District Court  
Eastern District of Pennsylvania

October 17, 2017

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

UNITED STATES OF AMERICA

v.

BERNARD J. BAGDIS

CRIMINAL ACTION NO. 07-CR-730-1  
CIVIL ACTION NO. 17-CV-4286

ORDER

On September 26, 2017, Defendant filed a "Timely Resubmittal of Motion Under 28 U.S.C. § 2255(f)(4) to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody." In the motion Defendant seeks to have his June 2010 conviction vacated. However, Defendant filed his first motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 on November 29, 2016. That motion was dismissed on February 20, 2017 because it was time barred. Defendant subsequently filed a Notice of Appeal in the United States Court of Appeals for the Third Circuit. The Court of Appeals denied his request for a certificate of appealability on July 12, 2017.

The instant motion to vacate must be dismissed as an unauthorized second or successive motion. Petitioner may not file a second or successive motion for relief pursuant to 28 U.S.C. § 2255 without first obtaining authorization from a Court of Appeals. Therefore, this court lacks jurisdiction to consider the claims raised in the instant motion and it must be dismissed for lack of jurisdiction.

*See United States v. Baptiste*, 223 F.3d 188, 190 (3d Cir. 2000).

AND NOW, this 17<sup>th</sup> day of October 2017 IT IS HEREBY ORDERED that

1. Defendant's motion to vacate is **DISMISSED**;
2. Defendant's remaining pending motions are **DENIED**; and,
3. A certificate of appealability will not issue because reasonable jurists would not debate the correctness of this Court's procedural ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

  
J. CURTIS JOYNER, J.