

BLD-319

July 27, 2017

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **17-1856**

CHRISTOPHER BERRY, Appellant

VS.

SUPERINTENDENT COAL TOWNSHIP SCI, et al.

(E.D. Pa. Civ. No. 2-14-cv-03130)

Present: AMBRO, GREENAWAY, JR. and SCIRICA, Circuit Judges

Submitted are:

- (1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1), which includes a motion for a preliminary injunction; and
- (2) Appellant's "Consolidated Motion to Amend Appeal and Motion for Appointment of Counsel"

in the above-captioned case.

Respectfully,

Clerk

MMW/JDM/clw

ORDER

Appellant's request for a certificate of appealability is denied. Appellant filed a motion for relief from judgment in the District Court under Federal Rule of Civil Procedure 60. The District Court denied and dismissed the motion, and Appellant has not shown that jurists of reason would debate the District Court's ruling. See Slack v. McDaniel, 529 U.S. 473, 484-85 (2000); Morris v. Horn, 187 F.3d 333, 340-41 (3d Cir. 1999). In particular, the District Court was not arguably required to transfer any of Appellant's earlier filings to state court or notify him that he needed to file particular

claim in state court. The District Court's determination that it lacked jurisdiction to consider Appellant's intellectual-disability claim also is not debatable among jurists of reason.

In his application for a certificate of appealability, Appellant complains that this Court never ruled on or acknowledged his "Consolidated Motion for Stay and Abeyance and Motion to Cure Filing Defect," dated October 27, 2016, and docketed in C.A. No. 16-3889. This is incorrect. By order dated November 1, 2016, we informed Appellant that we would treat his motion as an application under 28 U.S.C. § 2244 to file a second or successive habeas petition. We further note that Appellant raised his intellectual-disability claim in that § 2244 application, which we denied. See In re: Christopher Berry, C.A. No. 16-3998, order entered Dec. 5, 2016. To the extent that Appellant now raises new claims about fraud and newly discovered evidence in his application for a certificate of appealability, this Court will not address the issues, which were not presented in this action to the District Court. See Harris v. City of Philadelphia, 35 F.3d 840, 845 (3d Cir. 1994).

Appellant's requests for appointment of counsel and a preliminary injunction are denied. To the extent Appellant also seeks permission to amend his appeal, that request is denied. We have, however, considered the contents of his motion in resolving his application for a certificate of appealability.

By the Court,

s/Anthony J. Scirica
Circuit Judge



Marcia M. Waldron

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

Dated: September 20, 2017
CLW/cc: Mr. Christopher Berry
Susan E. Affronti, Esq.

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FOR THE THIRD CIRCUIT

No. 17-1856

CHRISTOPHER BERRY,
Appellant

v.

SUPERINTENDENT COAL TOWNSHIP SCI;
DISTRICT ATTORNEY PHILADELPHIA;
ATTORNEY GENERAL PENNSYLVANIA

(E.D. Pa. No. 2-14-cv-03130)

SUR PETITION FOR REHEARING

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

* As to panel rehearing only.

concurrent 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/Anthony J. Scirica
Circuit Judge

Dated: February 9, 2018
CLW/cc: Mr. Christopher Berry
Susan E. Affronti, Esq.