APPENDIX (A)

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

CHRISTIAN THOMAS, Petitioner,	:	CIVIL ACTION
v.	:	No. 16-5008
SUPERINTENDENT OF SCI COAL TOWNSHIP, et al., Respondents.	:	

REPORT & RECOMMENDATION

TIMOTHY R. RICE
U.S. MAGISTRATE JUDGE

May 18, 2017

Petitioner Christian Thomas, a prisoner in the State Correctional Institution in Coal Township, Pennsylvania, has filed a pro se writ of habeas corpus pursuant to 28 U.S.C. § 2254. He argues that his sentence is unconstitutional and his attorney was ineffective at his resentencing. Thomas also requests an evidentiary hearing and appointment of counsel. I recommend that Thomas's habeas petition be denied because his claims are meritless. I also recommend that his requests for an evidentiary hearing and counsel be denied with prejudice.

FACTUAL AND PROCEDURAL HISTORY

In 2002 and 2003, Thomas was sentenced to an aggregate term of 65 to 150 years of imprisonment for a series of rapes, burglaries, and robberies committed when he was 14 and 15 years old. See Thomas v. Pennsylvania, No. 10-4537, 2012 WL 6678686, *1 (E.D. Pa. Dec. 21, 2012). After being denied relief in the state courts, Thomas filed a pro se habeas petition, arguing that his aggregate sentence was unconstitutional based on Graham v. Florida, 560 U.S. 48, 74 (2010), in which the Supreme Court held that the Eighth Amendment prohibits a sentence of life without parole for a juvenile offender convicted of a non-homicide crime. See Thomas, 2012 WL 6678686, at *1. This Court agreed that Thomas's aggregate sentence violated Graham

because it provided "no meaningful opportunity to obtain release . . . during Thomas's expected lifetime." Id. at *2. The Court therefore granted Thomas habeas relief by vacating his sentence and remanding the case for resentencing consistent with Graham.[1] See Thomas v. Pennsylvania, No. 10-4537, 2012 WL 6678871, 12/21/2012 Order ¶ 3.

On October 2, 2013, the trial court held a resentencing hearing, during which Thomas's attorney explained that, while incarcerated since his initial sentencing, Thomas had received his high school diploma, taken vocational classes in construction, plumbing, and painting, and participated in a counseling program where he shared his experiences with juveniles. Commonwealth v. Thomas, Nos. 1147, 2950, 2952, 805, 3050, 3140, 2928 (C.C.P. Lancaster Co.), N.T. 10/2/2013 at 2-3. Thomas testified that he had learned how to read and write and had taken every class available to show that he could change. Id. at 4.

The trial court noted that Thomas sounded completely different than he had at the initial sentencing hearing and that it was lowering Thomas's sentence based in part on his testimony. Id. at 5. The court explained that it intended to give Thomas "a meaningful opportunity at parole" so that he would have some time to live outside of prison if he continued to do well in prison. Id. at 6; see also id. ("You're giving up your youth, but you would have a number of years that you could enjoy your life out of prison."). The court then resentenced Thomas to a new aggregate sentence of 40 to 80 years of imprisonment with credit for time served.[2] Id. at 7-8; 12/26/2013 Tr. Ct. Op. at 1-2.

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[1] The Commonwealth also agreed that Thomas's sentences should be vacated based on Graham. See Thomas, 2012 WL 6678686, at *1.

[2] The court incorrectly stated that the sentence was 40-100 years during the resentencing hearing. N.T. 10/2/2013 at 8; 12/26/2013 Tr. Ct. Op. at 2 n.1.

On June 12, 2014, the Superior Court affirmed Thomas's new sentence and on October 8, 2014, the Supreme Court denied further review. See 6/12/2014 Super. Ct. Op.; 10/8/2014 Supreme Ct. Order.

On December 3, 2014, Thomas filed a pro se petition for relief under Pennsylvania's Post-Conviction Relief Act, 42 Pa. C. S. § 9524 et seq., ("PCRA"). See 12/3/2014 PCRA Petition. The trial court appointed counsel, who filed an amended PCRA petition. See 1/8/2015 Tr. Ct. Order; 12/22/2015 PCRA Ct. Op. at 2. Following an evidentiary hearing, the trial court denied Thomas's petition. See N.T. 8/24/2015; 12/21/2015 PCRA Ct. Order. The Superior Court affirmed in August 2016.

In September 2016, Thomas filed his pro se habeas petition.[3] See 9/19/2016 Petition for Writ of Habeas Corpus (doc. 1). In October 2016, Thomas also filed a request for a stay of his petition to raise claims in state court. See 10/11/2016 Application for Leave to Stay (doc. 2). In November 2016, I denied Thomas's request for a stay because he had no claims pending in state court. See 11/3/2016 Order (doc. 7).

In February 2017, the Commonwealth responded to Thomas's habeas petition. See 2/17/2017 Response (doc. 12). Around the same time, Thomas filed letters requesting an attorney, copies of documents, and permission to amend his habeas petition. See 1/4/2017 Letter (doc. 11); 3/15/2017 Letter (doc. 13). In March 2017, I denied Thomas's request for an attorney without prejudice, granted his request for copies of documents, and granted his request to amend his petition and/or file a memorandum. See 3/20/2017 Order (doc. 14). In April 2017, Thomas filed a "traverse" brief and request for an evidentiary hearing. See 4/17/2017 Traverse and Req. for Evid. Hrg. (doc. 15).

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[3] Because Thomas did not file his petition on the proper forms, the Court directed him to refile his petition using those forms. See 10/14/2016 Order (doc. 4). Thomas refiled his petition on the correct forms in October 2016. See 10/31/2016 Revised Pet. (doc. 5).

DISCUSSION

A habeas petitioner must first raise his claims through any available procedures in state court, "thereby giving the State the opportunity to pass upon and correct alleged violations of its prisoners' federal rights." Baldwin v. Reese, 541 U.S. 27, 29 (2004) (citations omitted); see also 28 U.S.C. § 2254(b)(1). Where the state court has denied a petitioner's claim on the merits, this Court can grant habeas relief on that claim only if the state court's decision: (1) "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States;" or (2) "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). This is a "difficult to meet and highly deferential standard . . . which demands that state-court decisions be given the benefit of the doubt." Cullen v. Pinholster, 131 S. Ct. 1388, 1398 (2011).

I. Sentence Violates the Eighth Amendment

Thomas argues that his new sentence continues to violate the Eighth Amendment and Graham because he has no right to parole upon completion of his minimum term of 40 years and his true sentence is his maximum term of 80 years. See 9/19/2016 Pet. for Writ of Hab. Corpus at 4-17; 10/31/2016 Revised Pet. 8-10; 4/17/2017 Traverse at 7-9.

Thomas raised this claim before the state courts in his direct appeal. The trial court found Thomas's sentence was constitutional because it allowed him to have "a meaningful opportunity for parole" and "a meaningful opportunity to live a life out of prison for a number of years." 12/26/2013 Tr. Ct. Op. at 3. The court noted that if Thomas is "granted parole at the end of his minimum sentence he would be 54-55 years old [and his] life expectancy at that point would be approximately 21.6-22.3 more years." Id. The Superior Court affirmed, finding that Thomas's

sentence afforded him a reasonable opportunity to be released back into society during his lifetime as required by Graham. See 6/12/2014 Super. Ct. Op. at 2-5.

In Graham, the Supreme Court concluded that it was unconstitutional to sentence a juvenile offender who did not commit a homicide to life in prison without parole. 560 U.S. at 74. The Court, however, also explained that states are "not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime." Id. at 75. Rather, the states have to give juvenile nonhomicide offenders "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." Id. The Court explained: "The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does prohibit States from making the judgment at the outset that those offenders never will be fit to reenter society." Id.

Based on the trial court's new sentence, Thomas is now eligible for being released on parole after serving 40 years of his prison sentence. See 61 Pa. C.S. § 6137(a)(3); Rogers v. Pennsylvania Bd. of Prob. & Parole, 724 A.2d 319, 321 n.2 (Pa. 1999) (prisoner becomes eligible for parole upon serving his minimum term of imprisonment). Although Thomas is not guaranteed parole at that time, he has the right to apply for parole and to have his application considered by the Parole Board. Rogers, 724 A.2d at 321 n.2. The Board then has the discretion to grant parole if the best interests of Thomas justify or require that he be paroled and it does not appear that the interests of the Commonwealth will be injured by Thomas's parole. See 61 Pa. C.S. § 6137(a)(1). Thomas also cannot be denied parole for arbitrary or constitutionally impermissible reasons. See Burkett v. Love, 89 F.3d 135,139-40 (3d Cir. 1996).

Because Thomas began serving his sentence when he was 14 years old, he will be approximately 54 years old when he is eligible for parole. See 9/19/2016 Petition for Writ of

Hab. Corpus at 9; Commonwealth v. Thomas, CP-36-CR-1147-2001, Crim. Dkt. at 2. According to life expectancy tables published by the United States Center for Disease Control at the time of Thomas's resentencing, his life expectancy at the time of his eligibility for parole will be approximately 77.8 years. See U.S Life Tables 2012, Table 8, Life Table for Black Males, https://www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_08.pdf. Thomas, therefore, may have an opportunity to live approximately 23-24 more years of his life outside of prison. See id.

The state courts made a reasonable determination of the facts in finding that Thomas could seek parole when he was 54-55 years old and still have more than 20 years to live outside of prison if granted parole. Moreover, although Thomas's true sentence is his 80-year maximum term, Krantz v. Pa. Bd. of Prob. & Parole, 483 A.2d 1044, 1047 (Pa. Commw. 1984), his ability to seek parole and be released upon completing his minimum term of 40 years, gives him a "meaningful opportunity to obtain release from prison based on [his] demonstrated maturity and rehabilitation," during his lifetime. Graham, 560 U.S. at 75. The state courts' conclusion that Thomas's resentence is constitutional is a reasonable application of Graham. See Shivers v. Kerestes, No. 12-1291, 2013 WL 1311142, *3 (E.D. Pa. Apr. 2, 2013) (sentence did not violate Graham where petitioner was eligible for parole after serving minimum term of 35 years); Springer v. Dooley, No. 3:15-03008-RAL, 2015 WL 6550876, *7-*8 (D. So. Dak. Oct. 28, 2015) (sentence did not violate Eighth Amendment where petitioner would become eligible for parole at the age of 49 and have 20-35 more years to live).

Thomas also argues that his sentence is unconstitutional because the trial court relied on his likelihood to reoffend rather than his demonstrated maturity and rehabilitation. In its opinion addressing Thomas's PCRA claims, the trial court noted that it was not surprised that Thomas had done well in prison because it had previously determined that Thomas performed well while

incarcerated, but would reoffend upon being released. See 12/22/2015 Tr. Ct. Op. at 3; see also 5/20/2004 Tr. Ct. Supp. 1925(a) Op. at 1-4. The trial court nevertheless considered Thomas's testimony about his improvements in prison and based its new sentence in part on that testimony. See N.T. 10/2/2013 at 4-6. The court explained that its sentence was meant to allow Thomas to spend several years outside of prison if he continued to do well in prison. See id. at 6 ("If you do get paroled, I want you to have some time to live outside. If you are good enough to be paroled, if they think you're good enough to be paroled, you are rehabilitated."). The court did not solely base its sentence on Thomas's likelihood to reoffend.

This claim should be denied as meritless.

II. Ineffectiveness of Counsel

Thomas argues that his resentencing counsel was ineffective for failing to request a pre-sentence investigation ("PSI") or present any mitigating evidence.

Thomas included these claims in his PCRA petition and presented evidence in support of them during an evidentiary hearing before the PCRA court. See N.T. 8/24/2015. Thomas's resentencing counsel testified that he met with Thomas some time before the resentencing and they discussed why Thomas was being resentenced and what Thomas had been doing in prison. Id. at 8, 14-15. Counsel then told Thomas "what type of information [they] could bring to the Court's attention to help the Court render a fair sentence . . . from [Thomas's] perspective." Id. at 15. Counsel also said that he reviewed Thomas's prior PSI with Thomas and told him he could have another PSI done. Id. at 14-16. Counsel testified that Thomas requested an immediate resentencing. Id. at 16-17.

Thomas testified that his counsel visited him the day before his resentencing. Id. at 37. Although Thomas said they did not talk about his PSI, he admitted that he told counsel he

wanted to be sentenced immediately. Id. at 47. Thomas also said that before the meeting, he informed counsel about people he wanted to call as witnesses at his resentencing, including his sister and preschool teacher. Id. at 37-39. Thomas testified about his completion of numerous programs and courses to improve his behavior, thinking, education, and skills, and how he has tutored other inmates and donated money to charities while in prison. Id. at 39-44.

Thomas's sister testified that Thomas has changed since being imprisoned. Id. at 35. She explained that he has completed his high school education and is now patient. Id. Thomas's preschool teacher said that she has remained in contact with Thomas during his incarceration and knows that Thomas has pursued his education, taken numerous vocational courses, donated money, and mentored others. Id. at 21-30.

Following the hearing, the trial court denied Thomas's PCRA petition. See 12/22/2015 PCRA Op. and Order at 1-4. The Superior Court affirmed, finding that Thomas's claims failed because he could not establish that he was prejudiced by counsel's failure to present a new PSI or other mitigating evidence. 8/16/2016 Super. Ct. Op. at 4-5. The Superior Court explained that the evidence presented during the evidentiary hearing, "that [Thomas] had dedicated himself to assisting troubled youths and fellow inmates, achieved academic success, and matured during incarceration, merely confirmed what counsel represented and [Thomas] testified to at resentencing." Id. at 5.

The Superior Court noted that during the resentencing hearing, Thomas and his counsel informed the court about Thomas's numerous educational accomplishments, his vocational certifications, his work with troubled youths, and his participation in counseling programs. Id. at 5-6; see also N.T. 10/2/2013 at 2-5. The Superior Court also found that the trial court considered this evidence in determining Thomas's new sentence. 8/16/2016 Super. Ct. Op. at 6 ("the court

was persuaded by the evidence of [Thomas's] demonstrated maturation and rehabilitation, and, accordingly, fashioned a more lenient sentence than originally contemplated"); see also N.T. 10/2/2013 at 5-6 ("The kind of number I had in my mind I actually lowered a little bit because I think that you sounded good here today.").

The Superior Court further explained that Thomas "presented no evidence that a new [PSI] would have contained additional information not otherwise elicited at the resentencing hearing." 8/16/2016 Super. Ct. Op. at 6. The court reasoned that the same trial court judge presided over Thomas's entire case and "observed [Thomas's] maturation first hand," as well as his previous history of successes and failures. Id. at 7. The court concluded that Thomas "failed to prove how the testimony of his former teacher and his sister, an exhibit displaying his educational achievements, or a new presentence report would have augmented [the evidence presented during the resentencing hearing] and resulted in a lower sentence." Id. at 6.

The Superior Court's decision was based on a reasonable determination of the facts presented during the resentencing hearing and the PCRA evidentiary hearing. The court's denial of Thomas's ineffectiveness claim based on his failure to establish prejudice also an objectively reasonable application of clearly established Supreme Court law. See Strickland v. Washington, 466 U.S. 688, 687 (1984) (to establish ineffective assistance of counsel, a defendant must show that his counsel was deficient and such "deficient performance prejudiced the defense," meaning "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable"); Woodford v. Visciotti, 537 U.S. 19, 25 (2002) (habeas petitioner must show that state court's denial of ineffectiveness claim was objectively unreasonable).

This claim should be denied as meritless.

III. Evidentiary Hearing

This Court has discretion to grant an evidentiary hearing where it will be meaningful. See Campbell v. Vaughn, 209 F.3d 280, 287 (3d Cir. 2000). A petitioner bears the burden of showing the hearing will be meaningful, by "forecast[ing] . . . evidence beyond that already contained in the record" that would help his cause, "'or otherwise . . . explain[ing] how his claim would be advanced by an evidentiary hearing.'" Id. (quoting Cardwell v. Greene, 152 F.3d 331, 338 (4th Cir. 1998)).

Thomas contends that he is entitled to an evidentiary hearing to establish his Eighth Amendment and ineffectiveness claims and to explore the trial court's reasons for stating that he was likely to reoffend after being released from prison. See Request for Evid. Hrg. at 3-4. Given the extensive record from his resentencing and PCRA hearing, Thomas fails to explain or show what type of new evidence he would produce during an evidentiary hearing to meaningfully advance these claims.[4] See id. Thomas's request for an evidentiary hearing should be denied.

IV. Appointment of Counsel

This Court may appoint counsel for a habeas petitioner when the interests of justice require. See 18 U.S.C. § 3006A(a)(2)(B). The Court should determine whether the petitioner

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[4] Thomas included several exhibits with his initial Petition for Writ of Habeas Corpus, including psychological evaluations and vocational training certificates. The trial court, however, considered the psychological evaluations during Thomas's initial sentencing. See 5/20/2004 Tr. Ct. Supp. Rule 1925(a) Op. at 1-4. The trial court also considered Thomas's accomplishments during prison, including his completion of vocational courses, during the PCRA evidentiary hearing. See N.T. 8/24/2015 at 40-43. Thomas additionally includes an article about changes in development of the brain during adolescence or teenage years. See Ex. C, Adolescent Brain Maturation, Jay N. Giedd, M.D. Encyclopedia on Early Childhood Development. The information conveyed in this article, however, was considered by the Supreme Court in Graham, the case that formed the basis for Thomas's resentencing. See 560 U.S. at 68 ("parts of the brain involved in behavior control continue to mature through late adolescence").

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

CHRISTIAN THOMAS	:	
Petitioner,	:	
	:	**CIVIL ACTION NO. 16-5008**
v.	:	
	:	
SUPT. THOMAS MCGINLEY, *et al.*	:	
Respondents.	:	
	:	

MEMORANDUM OPINION

Rufe, J. **January 30, 2018**

Petitioner, proceeding *pro se*, objects to the Report and Recommendation ("R&R") of Magistrate Judge Timothy R. Rice, which recommends that the Court deny the petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Upon consideration of the record and of the objections in this case, the Court will overrule the objections and approve the R&R.

The R&R carefully evaluated each of Petitioner's claims and reasonably concluded that the decisions of the state courts did not violate the Constitution or contradict Supreme Court precedent. Petitioner has objected to the R&R, arguing that his revised sentence violates the Cruel and Unusual Punishment Clause of the Eighth Amendment to the United States Constitution, and that his counsel was ineffective at his October 2013 resentencing. Petitioner also requests an evidentiary hearing and the appointment of counsel. Petitioner's objections are without merit and, therefore, will be dismissed with prejudice and without a hearing.

I. BACKGROUND

The R&R set forth the procedural history of Petitioner's state criminal case, and will be incorporated by reference here, as it accurately stated the facts as determined by the state trial court. The Court adopts these sections of the R&R and summarizes them here to provide the

relevant context. In 2003, Petitioner pleaded guilty to a series of burglaries, robberies, and rapes, which he committed between the ages of fourteen and fifteen. That same year, the trial court sentenced Petitioner to 65 to 150 years' incarceration. In 2010, the United States Supreme Court decided *Graham v. Florida*,[1] which held that imposing sentences of life in prison without the possibility of parole on juvenile offenders was unconstitutional. In accordance with *Graham*, Petitioner was resentenced to

40 to 80 years' incarceration. Petitioner challenged his revised sentence and his counsel's representation at the resentencing, but his appeals and subsequent PCRA petition were unsuccessful.

II. LEGAL STANDARD

The Antiterrorism and Effective Death Penalty Act of 1996[2] ("AEDPA") governs habeas petitions, like the one before this Court. Under the AEDPA, "a district court shall entertain an application for writ of habeas corpus [filed on] behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or the laws or treaties of the United States."[3] Where the habeas petition is referred to a magistrate judge for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), a district court shall conduct a *de novo* review of "those portions of the report or specified proposed findings or recommendations to which objection is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge."[4]

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[1] 560 U.S. 48 (2010).

[2] 28 U.S.C. § 2254.

[3] 28 U.S.C. § 2254(a).

[4] 28 U.S.C. § 636(b)(1).

When the claims presented in a federal habeas petition have been decided on the merits in state court, a district court may not grant relief unless the adjudication of the claim in state court resulted in a decision: (1) "that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or (2) "that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."[5]

A state court's decision is "contrary to . . . clearly established" federal law where the state court applies a rule of law that differs from the governing rule set forth in Supreme Court precedent, or "if the state court confronts a set of facts that are materially indistinguishable from a decision of [the] Supreme Court and nevertheless arrives at a result different from its precedent."[6] A decision is an "unreasonable application" of clearly established law where the state court "identifies the correct governing legal principle . . . but unreasonably applies that principle to the facts of the prisoner's case."[7] The "unreasonable application" clause requires more than an incorrect or erroneous state court decision.[8] Instead, the application of clearly established law must be "objectively unreasonable."[9]

A petitioner faces a high hurdle in challenging the factual basis for a prior state-court decision rejecting a claim. The prisoner bears the burden of rebutting the state court's factual findings by clear and convincing evidence.[10] Furthermore, "a state-court factual determination is

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[5] 28 U.S.C. § 2254(d).

[6] *Lockyer v. Andrade*, 538 U.S. 63, 73 (2003) (quoting *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000)).

[7] *Id.* at 75 (quoting *Williams*, 529 U.S. at 413).

[8] *Id.*

[9] *Id.*

[10] *Burt v. Titlow*, 134 S. Ct. 10, 15 (2013) (internal quotations and citations omitted).

not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance."[11]

III. DISCUSSION

A. Constitutionality of Sentence

Petitioner argues that his revised sentence continues to violate the Eighth Amendment because he has no right to parole upon completion of the minimum term of 40 years and his true sentence is the maximum term of 80 years.

The Eighth Amendment prohibits the infliction of "cruel and unusual punishment."[12] In *Graham v. Florida*, the Supreme Court held that it was unconstitutional and violative of the Eighth Amendment to sentence a juvenile offender who did not commit a homicide to life in prison without the possibility of parole.[13] The Court emphasized, however, that states are "not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime."[14] Instead, states must give juvenile offenders "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."[15] Thus, "[t]he Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does prohibit States from making the judgment at the outset that those offenders will never be fit to reenter society."[16]

Petitioner in this case argues that his revised sentence violates the Eighth Amendment and the holding in *Graham* because he has no guaranteed right to parole upon completion of his

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[11] *Id.* (internal quotation marks and citation omitted).

[12] U.S. Const., amend. VIII.

[13] 560 U.S. 48, 82 (2010).

[14] *Id.* at 75.

[15] *Id.*

[16] *Id.*

minimum term of 40 years. Instead, Petitioner asserts that his actual sentence is the maximum term of 80 years. Petitioner raised this issue while his case was before the state courts, which determined that Petitioner's revised sentence was constitutional because it afforded him a meaningful opportunity to obtain release. In fact, courts have noted that "[w]hen a term-of-years sentence includes the possibility of parole . . . [there is] no *Graham* violation if the defendant becomes eligible for parole within his or her expected lifetime."[17] Conversely, courts have held that where, under a term-of-years sentence, an inmate's parole eligibility occurs close to or exceeds a petitioner's life expectancy, the sentence violates *Graham*.[18]

The R&R correctly noted that Petitioner will become eligible for parole after serving 40 years of his sentence,[19] and at that point he will be approximately 54-55 years old. His life expectancy is about 77.8 years, leaving Petitioner with an additional 23-24 years after he becomes eligible for parole during which he will have an opportunity to demonstrate that he is fit to reenter society.[20] In the resentencing, the trial court considered Petitioner's demonstrated maturity and rehabilitation in prison thus far in fashioning a significantly reduced term of

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[17] *See Springer v. Dooley*, 2015 WL 6550876, at *7-8 (D.S.D. Oct. 28, 2015) (stating that a 261-year sentence was not unconstitutional where the petitioner would be eligible for parole after serving thirty-three years); *see also Shivers v. Kerestes*, 2013 WL 1311142, at *3 (E.D. Pa. Apr. 2, 2013) (reasoning that sentence did not violate *Graham* where petitioner was eligible for parole after serving minimum term of thirty-five years); *Angel v. Commonwealth*, 704 S.E.2d 386, 402 (Va. 2011) (finding no *Graham* violation where the petitioner could request conditional release at age sixty).

[18] *See People v. Caballero*, 282 P.3d 291, 295 (Cal. 2012) (reasoning that a 110-year sentence amounts to a de facto life sentence where an inmate's parole eligibility date falls outside of the inmate's life expectancy); *see also Floyd v. State*, 87 So.3d 45, 46-47 (Fla. Dist. Ct. App. 2012) (reasoning that inmate received a de facto life sentence where he would not be eligible for parole until age eighty-five).

[19] *See* 61 Pa. Cons. Stat. Ann. § 6137(a)(3); *see also Rogers v. Pa. Bd. Prob. & Parole*, 724 A.2d 319, 321 n.2 (Pa. 1999).

[20] Furthermore, there is no evidence that Petitioner has been or will be denied a pre-condition of release, or that he is facing a systematic denial of his parole applications despite demonstrated rehabilitation. *See Greiman v. Hodges*, 79 F. Supp. 3d 933, 942-43 (S.D. Iowa 2015) (holding that denying juvenile offender a pre-condition of release did not provide offender with a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation); *see also Hayden v. Keller*, 134 F. Supp. 3d 1000, 1009-10 (E.D.N.C. 2015) (holding that repeatedly neglecting to consider juvenile status of offender did not present a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation).

imprisonment. Although Petitioner's maximum sentence is 80 years, the R&R reasonably concluded that Petitioner's eligibility for parole after serving 40 years of his sentence allows him a "meaningful opportunity to obtain release from prison based on [his] demonstrated maturity and rehabilitation."[21] Petitioner's Eighth Amendment claim is without merit.

B. Ineffective Assistance of Counsel

Petitioner also contends that his resentencing counsel was ineffective for failing to request a presentence investigation ("PSI") or present mitigating testimony from his sister and his preschool teacher during the resentencing hearing.

The Sixth Amendment guarantees the effective assistance of counsel "at critical stages of a criminal proceeding,"[22] including resentencing. Ineffective assistance of counsel claims are evaluated pursuant to the two-prong test established by the Supreme Court in *Strickland v. Washington*.[23] Under *Strickland*, counsel is presumed to have acted reasonably and effectively unless a petitioner demonstrates that (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the petitioner.[24] To establish deficiency, a petitioner must show that "counsel's representation fell below an objective standard of reasonableness."[25] To demonstrate prejudice, "the petitioner must show that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'"[26] For example, "[a]n attorney cannot be ineffective for failing to raise a claim that lacks merit," because in such cases, the attorney's performance is not deficient, and would not have affected

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[21] *Graham*, 560 U.S. at 75.

[22] *Lee v. United States*, 137 S. Ct. 1958, 1964 (2017) (quoting *Lafler v. Cooper*, 566 U.S. 156, 165 (2012)).

[23] 466 U.S. 668 (1984).

[24] *Id.* at 687, 690.

[25] *Porter v. McCollum*, 558 U.S. 30, 38 (2009) (quoting *Strickland*, 466 U.S. at 688) (internal quotation marks omitted).

[26] *Albrecht v. Horn*, 485 F.3d 103, 127 (2007) (quoting *Strickland*, 466 U.S. at 694).

the outcome of the proceeding.[27] In evaluating the Pennsylvania courts' treatment of ineffectiveness claims, the Court must determine whether the state courts' "application of *Strickland* to [petitioner's] ineffectiveness claim was objectively unreasonable [and] . . . resulted in an outcome that cannot reasonably be justified under *Strickland*."[28]

Petitioner argues that his resentencing counsel was ineffective for failing to request a PSI or present mitigating testimony from his sister and preschool teacher. After careful consideration of the state court record, the R&R correctly concluded that Petitioner's ineffectiveness claim is meritless. As the R&R explained, before the resentencing, counsel met with Petitioner and discussed why he was being resentenced, what he had been doing in prison, and what type of information they could introduce at the resentencing hearing to support a reduced sentence. Counsel also reviewed the prior PSI with Petitioner and they discussed the possibility of having an updated PSI done prior to the resentencing hearing.[29] Rather than wait for an updated PSI, Petitioner requested immediate resentencing.[30] Counsel also met with Petitioner the day before the resentencing, at which time Petitioner again emphasized that he wanted to be resentenced immediately.[31]

At the resentencing hearing, Petitioner's counsel apprised the trial court of Petitioner's numerous educational accomplishments, including receipt of his high school diploma, and certification in vocational skills such as construction, plumbing, and painting.[32] Additionally, Petitioner testified on his own behalf, emphasizing his work with troubled youths, his ongoing

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[27] *Singletary v. Blaine*, 89 F. App'x 790, 794 (3d Cir. 2004).

[28] *Werts v. Vaughn*, 228 F.3d 178, 204 (3d Cir. 2000).

[29] R&R at 7.

[30] *Id.*

[31] *Id.* at 7-8.

[32] *Id.* at 2.

communication with a mentor, his educational accomplishments, and his participation in counseling.[33] The trial court considered this evidence and imposed a "more lenient sentence than originally contemplated" of 40 to 80 years' incarceration.[34]

Petitioner appealed the revised sentence in a PCRA petition, raising the same ineffectiveness claim regarding counsel's failure to introduce an updated PSI and to call his sister and preschool teacher to testify during the resentencing hearing. The trial court allowed Petitioner to present this additional evidence at an evidentiary hearing. During the evidentiary hearing, Petitioner's sister explained that Petitioner had changed since being imprisoned, had completed high school, and had become more patient. Petitioner's preschool teacher testified that she had remained in contact with Petitioner during his imprisonment, and had learned of his educational and charitable achievements. Despite this testimony, the trial court denied Petitioner's PCRA petition. The Pennsylvania Superior Court affirmed, finding that Petitioner "failed to prove how the testimony of his former teacher and his sister, an exhibit displaying his educational achievements, or a new presentence report would have augmented [the evidence presented during the resentencing] and resulted in a lower sentence."[35]

Applying *Strickland*, the R&R correctly concluded that Petitioner has failed to meet his burden of demonstrating that counsel's performance at the resentencing hearing was deficient and that it prejudiced Petitioner's defense. As the Superior Court articulated, the trial court considered counsel's arguments and evidence presented at the resentencing hearing, and presided over many of Petitioner's numerous motions, petitions, and hearings, including his original sentence in 2003, "observ[ing] [Petitioner's] maturation first hand," and considering Petitioner's

[33] *Id.* at 8.

[34] *Id.* at 9 (internal quotation marks and citations omitted).

[35] *Id.* (internal quotation marks and citations omitted).

various successes over the course of his incarceration.[36] The trial court considered this evidence in issuing the revised sentence, and explained that the revised sentence would leave open the possibility that Petitioner could later be paroled after completing the minimum term of 40 years' imprisonment. This Court agrees with the R&R that Petitioner has not presented evidence sufficient to demonstrate that counsel's performance was deficient, or that any allegedly deficient performance affected the outcome of his resentencing.

C. Evidentiary Hearing

This Court has the discretion to grant an evidentiary hearing where it would be meaningful.[37] A petitioner bears the burden of showing that a new hearing would be meaningful by establishing the existence of new evidence, beyond what is already contained in the record, that would help advance his claims.[38]

Petitioner asserts that he is entitled to an evidentiary hearing on his claims. However, the precise issues raised have been the subject of an evidentiary hearing before the PCRA court, and Petitioner has not identified new evidence beyond the record evidence, nor has he demonstrated how a new evidentiary hearing would advance his claims. Consequently, the R&R reasonably concluded that Petitioner's request for an evidentiary hearing should be denied.[39]

D. Appointment of Counsel

The Court may appoint counsel for a habeas petitioner when "the interests of justice so require."[40] The Court should consider whether a petitioner has presented a non-frivolous claim,

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[36] *Id.* (internal quotation marks and citation omitted).

[37] *See Campbell v. Vaughn*, 209 F.3d 280, 287 (3d Cir. 2000).

[38] *Id.* (internal citation omitted).

[39] R&R at 10 (reasoning that Petitioner "fail[ed] to explain or show what type of new evidence he would produce during an evidentiary hearing to meaningfully advance these claims").

[40] 18 U.S.C. § 3006A(a)(2)(B).

whether the appointment of counsel would benefit the petitioner and the court, the complexity of the factual and legal issues, and the petitioner's ability to investigate the facts and present claims.[41] The R&R recommended denying the appointment of counsel because the factual issues in the instant matter are well-developed, Petitioner has comprehended the issues in this case and fulfilled the procedural requirements therein, and Petitioner's revised sentence is constitutional under the Eighth Amendment and *Graham*.[42] Thus, the Court adopts the recommendation of the R&R. The interests of justice do not warrant the appointment of counsel.

IV. CONCLUSION

In conclusion, Petitioner's Objections to the R&R are overruled. Because Petitioner has not made a "substantial showing of the denial of a constitutional right,"[43] a certificate of appealability should not issue. There is no basis to conclude that "reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further."[44] An appropriate order follows.

[41] *See Reese v. Fulcomer*, 946 F.2d 247, 263-64 (3d Cir. 1991), *superseded on other grounds by statute*, 28 U.S.C. § 2254.

[42] R&R at 11.

[43] *See* 28 U.S.C. § 2253(c)(2).

[44] *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal citation omitted).

has presented a non-frivolous claim, whether the appointment of counsel would benefit the petitioner and the court, the complexity of the factual and legal issues, and the petitioner's ability to investigate the facts and present claims. See Reese v. Fulcomer, 946 F.2d 247, 263-64 (3d Cir. 1991), superseded on other grounds by statute, 28 U.S.C. § 2254.

Because Thomas's new sentence is constitutional based on Graham, the interests of justice do not warrant appointing counsel for Thomas. His request for counsel should be denied with prejudice.

RECOMMENDATION

AND NOW, on May 18, 2017, it is respectfully recommended that the petition for writ of habeas corpus be DENIED with prejudice. It is further recommended that there is no probable cause to issue a certificate of appealability.[5] Petitioner may file objections to this Report and Recommendation within fourteen days after being served with a copy. See Local Civ. Rule 72.1. Failure to file timely objections may constitute a waiver of any appellate rights. See Leyva, 504 F.3d at 364.

BY THE COURT:

/s/ Timothy R. Rice
TIMOTHY R. RICE
U.S. MAGISTRATE JUDGE

[5] Because jurists of reason would not debate my recommended procedural or substantive dispositions of the petitioner's claims, no certificate of appealability should be granted. See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

CLD-278 August 2, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **18-1689**

CHRISTIAN S. THOMAS, Appellant

VS.

THE DISTRICT ATTORNEY OF THE COUNTY OF LANCASTER; ET AL.

(E.D. Pa. Civ. No. 5-16-cv-05008)

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

Submitted are:

(1) By the Clerk for possible dismissal due to a jurisdictional defect;

(2) Appellant's request for a certificate of appealability ("COA") under 28 U.S.C. § 2253(c)(1);

(3) Appellant's motion for appointment of counsel; and

(4) Appellant's response to the Clerk's letter listing this appeal for possible dismissal due to a jurisdictional defect and for a decision on the issuance of a COA

in the above-captioned case.

Respectfully,
Clerk

ORDER

Appellant's application for a certificate of appealability ("COA") is denied. For substantially the reasons provided by the District Court, reasonable jurists would not debate the District Court's rejection of Appellant's habeas claims on the merits or conclude that those claims are adequate to deserve encouragement to proceed further. See Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). Because the COA requirement in 28 U.S.C. § 2253(c)(1) is jurisdictional, see Gonzalez v. Thaler, 565 U.S. 134, 142

(2012), and we deny a COA here, we need not decide whether this appeal should be dismissed for lack of appellate jurisdiction as time-barred, see Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 578, 584 (1999) (explaining that "there is no unyielding jurisdictional hierarchy" or mandatory "sequencing of jurisdictional issues"). Appellant's motion for appointment of counsel is denied. See 18 U.S.C. § 3006A(a)(2); Reese v. Fulcomer, 946 F.2d 247, 263-64 (3d Cir. 1991), superseded on other grounds by statute, 28 U.S.C. § 2254(d).

By the Court,

s/ Julio M. Fuentes
Circuit Judge

Dated: September 4, 2018
tmm/cc: Christian S. Thomas

A True Copy:

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

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT
CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA 19106-1790

TELEPHONE
215-597-2995

March 27, 2018

Kate Barkman, Clerk of Court
United States District Court
2609 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1796

Re: Thomas v. McGinley, et al.
E.D. Pa. No. 5-16-cv-05008

Dear Ms. Barkman:

Pursuant to Rule 4(d), Federal Rules of Appellate Procedure, and Rule 3.4, Third Circuit Local Appellate Rules, we are forwarding the attached notice of appeal from the District Court Memorandum Opinion (#24) and Order (#25) entered 1/31/18 which was filed with this office in error. See Rule 3(a)(1), Federal Rules of Appellate Procedure and Rule 3.4, Third Circuit Local Appellate Rules. **The notice was placed in prison mail on 3/15/18 and should be docketed as of that date.**

This document is being forwarded solely to protect the litigant's right to appeal as required by the Federal Rules of Appellate Procedure and Rule 3.4, Third Circuit Local Appellate Rules. Upon receipt of the document, kindly process it according to your Court's normal procedures. If your office has already received the same document, please disregard the enclosed copy to prevent duplication.

Pursuant to Rule 3(a)(1), Federal Rules of Appellate Procedure, a notice of appeal must be filed with the Clerk of the District Court. This Court may not act on an appeal until the notice has been docketed in the District Court and certified to this Court by the District Court Clerk.

Thank you for your assistance in this matter.

Very truly yours,

By: /s/ Patricia S. Dodszuweit
Clerk

PSD/lld
Enclosure
cc: Christian S. Thomas (w/out enclosure)

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

TELEPHONE
215-597-2995

September 4, 2018

District Attorney Lancaster County
Lancaster County Office of District Attorney
50 North Duke Street
Lancaster, PA 17608

Christian S. Thomas
Coal Township SCI
1 Kelley Drive
Coal Township, PA 17866

RE: Christian Thomas v. District Attorney Lancaster Co, et al
Case Number: 18-1689
District Court Case Number: 5-16-cv-05008

ENTRY OF JUDGMENT

Today, **September 04, 2018** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:
3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).
15 pages if hand or type written.

Court at 1 First Street, N.E., Washington, D.C. 20543 (phone 202-479-3000) for information on filing a petition for writ of certiorari.

In addition, it appears that the Court may lack appellate jurisdiction for the following reason:

The notice of appeal in your civil case was not filed within the time prescribed by the Federal Rules of Appellate Procedure:

Order entered: January 31, 2018

Notice of Appeal filed: March 15, 2018

Period permitted: 30 Days

Rule: 4(a)(1)(A)

In the case of an untimely notice of appeal in civil cases, the District Court has discretion to permit an extension of time to file the notice of appeal: (1) where a motion requesting such relief is filed not later than 30 days after the normal appeal period; and (2) where good cause or excusable neglect is shown. See Federal Rules of Appellate Procedure 4(a)(1) and 4(a)(5), attached.

The District Court may reopen the time for appeal when a party entitled to notice of entry of a judgment or order did not receive such notice from the court or any party within 21 days of its entry: (1) upon motion filed within 180 days of entry of the judgment or order or within 14 days of receipt of such notice, whichever is earlier; and (2) upon finding that no party would be prejudiced. See Federal Rule of Appellate Procedure 4(a)(6), attached.

The United States Supreme Court, however, has held that a pro se prisoner's notice of appeal may be considered timely if it is delivered to the prison authorities, for forwarding to the clerk of the District Court, within the time prescribed by the appropriate Federal Rule of Appellate Procedure (Fed. R. App. P.) for filing a notice of appeal from the judgment or order. Houston v. Lack, 487 U.S. 266 (1988). If you allege in your response regarding timeliness that you delivered your notice of appeal to prison authorities within the time prescribed for appeal, making your notice of appeal timely filed under Houston, you must include a sworn declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of delivery and that that first-class postage was prepaid. Fed. R. App. P. 4(c)(1). You should also submit any available documentation of timely delivery. A showing of timely delivery can be made, for example, by providing this office with a certified copy of the prison mail log containing the date of delivery of your notice of appeal to the prison authorities, or a copy of a prison mail receipt reflecting timely delivery.

Jurisdictional defects cannot be remedied by the Court of Appeals. The parties may submit written argument regarding jurisdiction. Any response regarding jurisdiction must be in proper form (original copy, with certificate of service), and must be filed within the time set forth above

for filing a memorandum of law in support of or in opposition to issuance of a certificate of appealability.

The parties will be advised of any order issued in this matter.

Very truly yours,

s/ Patricia S. Dodszuweit
Clerk

By:
Stephen Hutchman, Administrative Assistant

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 18-1689

Christian Thomas v. District Attorney Lancaster Co, et al

(District Court No. 5-16-cv-05008)

ORDER

The Court has received petition for rehearing by **Christian S. Thomas.**

The petition for rehearing requirements are set forth in Fed. R. App. P. 32(g), 35(b), 40(b) and Third Circuit LAR 35.1 and 35.2. Your document does not comply with the following requirement(s):

Any additional documents attached to the petition must be accompanied by a motion to file the exhibits attached to the petition for rehearing. See Third Circuit L.A.R. 35.2(a).

Pursuant to 3rd Cir. LAR Misc. 107.3 and 3rd Cir. LAR Misc. 113, if the Court finds that a party continues not to be in compliance with the rules despite notice by the Clerk, the Court may, in its discretion, impose sanctions as it may deem appropriate, including but not limited to the dismissal of the appeal, imposition of costs or disciplinary sanctions upon a party or counsel.

The above deficiencies must be corrected by **10/04/2018.**

No action will be taken on the document until these deficiencies are corrected.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Date: September 20, 2018

cc: Christian S. Thomas

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 18-1689

Thomas v. District Attorney Lancaster County

To: Clerk

1) Motion by Appellant for Extension of Time to File Petition for Rehearing

2) Motion by Appellant for Further Stay/Abeyance of Petition for Rehearing

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Action on the foregoing motions is deferred pending the filing of Appellant's motion for leave to attach exhibits to the petition for rehearing pursuant to the Clerk's Order dated September 20, 2018. Upon filing of the motion to attach exhibits to the petition for rehearing, the motion will be sent to the merits panel, along with the motion for extension of time to file the petition and the motion for further stay/abeyance of the petition for rehearing.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Dated: September 28, 2018
SLC/cc: Christian S. Thomas

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 18-1689

Thomas v. District Attorney Lancaster County

To: Clerk

1) Second Motion by Appellant for Extension of Time to File Petition for Rehearing

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The foregoing motion is denied as unnecessary. It is noted that Appellant has filed the required motion for leave to attach exhibits to the petition for rehearing as of October 9, 2018. As previously indicated in the Clerk's September 28, 2018 Order, all of Appellant's pending motions will be forwarded to the merits panel for disposition.

It is further noted that Appellant has also submitted a duplicate copy of the petition for rehearing previously received on September 20, 2018. No action will be taken on the duplicate copy of the petition for rehearing. Should the Court grant Appellant's pending motions, the petition for rehearing received on September 20, 2018, will be filed on the docket as of the date of the Order granting the motions.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Dated: October 10, 2018
Tmm/cc: Christian S. Thomas

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-1689

CHRISTIAN S. THOMAS,
Appellant

v.

THE DISTRICT ATTORNEY OF
THE COUNTY OF LANCASTER;
THE ATTORNEY GENERAL OF THE STATE
OF PENNSYLVANIA

(E. D. Pa. No. 5-16-cv-05008)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., VANASKIE, SHWARTZ, KRAUSE, RESTREPO, BIBAS, and FUENTES,* 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 concurred in the decision having asked for rehearing, and a majority of the judges of the

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* Pursuant to Third Circuit I.O.P. 9.5.3., Judge Fuentes's vote is limited to panel rehearing.

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/ Julio M. Fuentes
Circuit Judge

Dated: November 7, 2018

Lmr/cc: Christian S. Thomas
DA Lancaster County

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 18-1689

Christian Thomas v. District Attorney Lancaster Co, et al

(District Court No. 5-16-cv-05008)

ORDER

The Court has received petition for rehearing by **Christian S. Thomas.**

The petition for rehearing requirements are set forth in Fed. R. App. P. 32(g), 35(b), 40(b) and Third Circuit LAR 35.1 and 35.2. Your document does not comply with the following requirement(s):

Any additional documents attached to the petition must be accompanied by a motion to file the exhibits attached to the petition for rehearing. See Third Circuit L.A.R. 35.2(a).

Pursuant to 3rd Cir. LAR Misc. 107.3 and 3rd Cir. LAR Misc. 113, if the Court finds that a party continues not to be in compliance with the rules despite notice by the Clerk, the Court may, in its discretion, impose sanctions as it may deem appropriate, including but not limited to the dismissal of the appeal, imposition of costs or disciplinary sanctions upon a party or counsel.

The above deficiencies must be corrected by **10/04/2018.**

No action will be taken on the document until these deficiencies are corrected.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Date: September 20, 2018

cc: Christian S. Thomas

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 18-1689

Thomas v. District Attorney Lancaster County

To: Clerk

1) Motion by Appellant for Extension of Time to File Petition for Rehearing

2) Motion by Appellant for Further Stay/Abeyance of Petition for Rehearing

---

Action on the foregoing motions is deferred pending the filing of Appellant's motion for leave to attach exhibits to the petition for rehearing pursuant to the Clerk's Order dated September 20, 2018. Upon filing of the motion to attach exhibits to the petition for rehearing, the motion will be sent to the merits panel, along with the motion for extension of time to file the petition and the motion for further stay/abeyance of the petition for rehearing.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Dated: September 28, 2018
SLC/cc: Christian S. Thomas

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