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CLD-006

October 11, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **18-2339**

HOZAY ROYAL, Appellant

VS.

ATTORNEY GENERAL NEW JERSEY; ET AL.

(D.N.J. Civ. No. 2-16-cv-06498)

Present: CHAGARES, RESTREPO and SCIRICA, Circuit Judges

Submitted:

- (1) By the Clerk for possible dismissal due to a jurisdictional defect;
- (2) Appellant's letter regarding the timeliness of his appeal;
- (3) Appellant's application for a certificate of appealability ("COA") under 28 U.S.C. § 2253(c)(1), which includes a request for oral argument;
- (4) Appellee Attorney General of New Jersey's response to Appellant's COA application; and
- (5) Appellant's reply in support of his COA application

in the above-captioned case..

Respectfully,

Clerk

ORDER

Appellant appeals from the District Court's order entered May 9, 2018. In cases like this one, a party has 30 days from the entry of the District Court's order to file his notice of appeal, see Fed. R. App. P. 4(a)(1)(A), and the notice is deemed filed on the date that it is received by the District Court Clerk's Office, see Lee v. Houtzdale SCI, 798 F.3d 159, 163 (3d Cir. 2015). This timeliness requirement is "mandatory and jurisdictional," Bowles v. Russell, 551 U.S. 205, 209 (2007) (quoting Griggs v. Provident Consumer

Disc. Co., 459 U.S. 56, 61 (1982) (per curiam)), and it is not subject to equitable tolling, see id. at 214. In this case, the 30-day deadline expired on Friday, June 8, 2018, but the District Court Clerk's Office did not receive Appellant's notice of appeal until June 9, at the earliest. Appellant did not move the District Court to extend the time to appeal or reopen the time to appeal (nor did he file any document that should have been construed as such a motion), and it is now too late for him to do so. See Fed. R. App. P. 4(a)(5)(A)(i), 4(a)(6)(B). Accordingly, this appeal is untimely and we must dismiss it for lack of jurisdiction. In light of this disposition, Appellant's application for a certificate of appealability and his related request for oral argument are denied as moot.

By the Court,

s/Michael A. Chagares
Circuit Judge

Dated: December 14, 2018

Sb/cc: Hozay Royal

John McNamara, Jr., Esq.



A True Copy:

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

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-2339

HOZAY ROYAL,
Appellant

v.

ATTORNEY GENERAL NEW JERSEY, et al.

(D.N.J. Civ. No. 2-16-cv-06498)

SUR PETITION FOR REHEARING

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

* Hon. Anthony J. Scirica'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/Michael A. Chagares
Circuit Judge

Dated: February 5, 2019
Sb/: Hozay Royal
John McNamara, Jr., Esq.

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NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

HOZAY ROYAL,	:	
	:	Civil Action No. 16-6498 (CCC)
Petitioner,	:	
	:	
v.	:	ORDER
	:	
THE ATTORNEY GENERAL OF THE	:	
STATE OF NEW JERSEY, et al.,	:	
	:	
Respondents.	:	
	:	

This matter has come before the Court on the Petition for Writ of Habeas Corpus of Petitioner Hozay Royal, for relief under 28 U.S.C. § 2254. ECF No. 12. The Court has considered the Petition, Response (ECF No. 18), Reply (ECF No. 22), and the records of the state court proceedings. For the reasons set forth in the Opinion filed on even date, and for good cause shown,

IT IS on this 9 day of May, 2018,

ORDERED that the Petition, (ECF No. 12), is hereby **DENIED**; it is further

ORDERED that a certificate of appealability is **DENIED**; and it is further

ORDERED that the Clerk shall serve this Order and the accompanying Opinion upon the parties, and shall **CLOSE** the file.

SO ORDERED.



Claire C. Cecchi
United States District Judge