

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-2139

IN RE: LARRY CHARLES,
Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the Eastern District of Pennsylvania
(Related to D.C. Civ. Nos. 2-13-cv-07548 & 2-14-cv-00189)

Submitted Pursuant to Rule 21, Fed. R. App. P.
June 28, 2018
Before: MCKEE, VANASKIE and SCIRICA, Circuit Judges

JUDGMENT

This cause came to be considered on a petition for writ of mandamus submitted on June 28, 2018. On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the petition for writ of mandamus be, and the same is, denied. All of the above in accordance with the opinion of the Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: October 19, 2018



A True Copy:

Patricia S. Dodszuweit

Patricia S. Dodszuweit, Clerk

Appendix A

NOT PRECEDENTIAL

ALD-254

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Submitted Pursuant to Rule 21, Fed. R. App. P.

June 28, 2018

Before: MCKEE, VANASKIE and SCIRICA, Circuit Judges

(Opinion filed: October 19, 2018)

OPINION*

PER CURIAM

In this mandamus petition, Larry Charles once again “seeks a mandamus to compel the United States District Court for the Eastern District of Pennsylvania to issue a Certificate of Appealability” in connection with a 28 U.S.C. § 2254 petition he filed in 2013. We will deny Charles’ petition.

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Charles filed a § 2254 petition in 2013, seeking to attack a 25–50 year sentence imposed after he pleaded no contest to various sex crimes in Philadelphia County. The District Court denied his petition and his request for a certificate of appealability. We denied his request for a certificate of appealability—concluding that “jurists of reason would not debate the District Court’s assessment of his constitutional claims”—and also denied his request for rehearing. C.A. No. 15-3064. The Supreme Court denied his petition for a writ of certiorari, and also his petition for rehearing. Charles v. Harry, 137 S. Ct. 671, reh’g denied, 137 S. Ct. 1369 (2017).

Charles then filed his first petition for a writ of mandamus, requesting an order to compel the District Court to issue a certificate of appealability. We denied his mandamus petition, In re Charles, 690 F. App’x 791 (3d Cir. 2017), and also denied his request for rehearing, C.A. No. 17-1966. The Supreme Court denied his petition for a writ of mandamus, and also his petition for rehearing. In re Charles, 138 S. Ct. 997, reh’g denied, 138 S. Ct. 1589 (2018).

Charles again seeks to challenge the District Court’s denial of his request for a certificate of appealability. When Charles previously sought mandamus relief based on the same arguments he now raises, we ruled that he had “exhausted all avenues to appeal the District Court’s denial of his request for a certificate of appealability—and has lost. He may not now use mandamus as yet another attempt at an appeal.” In re Charles, 690 F. App’x at 791 (citing Cheney v. U.S. Dist. Court, 542 U.S. 367, 380–81 (2004)). The

same analysis applies here. Accordingly, will deny Charles' mandamus petition.¹ Charles' motion to accept his petition which exceeds the page limitation is granted.

¹ In the alternative, Charles once again asks us to recall our mandate denying his request for a certificate of appealability. We previously denied his request, which is "regarded as a second or successive application for purposes of [28 U.S.C.] § 2244(b)," Calderon v. Thompson, 523 U.S. 538, 553 (1998), because it did not meet § 2244(b)'s gatekeeping requirements, see United States v. Winkelman, 746 F.3d 134, 135 (3d Cir. 2014). In re Charles, 690 F. App'x at 791 n.1. For the same reasons we previously expressed, we will not recall our mandate.

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SUR PETITION FOR REHEARING

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

** The Honorable Thomas I. Vanaskie, a member of the merits panel that considered this matter, retired from the Court on January 1, 2019. The request for panel rehearing has been submitted to the remaining members of the merits panel and the request for rehearing en banc submitted to all active members of the Court who are not recused.

Appendix B

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/Anthony J. Scirica
Circuit Judge

Dated: January 11, 2019
JK/cc: Larry Charles
Max C. Kaufman, Esq.

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