

CLD-057

December 20, 2018

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 18-2917

JEFFREY L. MILLER, Appellant

vs.

SUPERINTENDENT FRACKVILLE SCI, ET AL.

(M.D. PA. CIV. NO. 3-09-cv-00584)

Present: CHAGARES, RESTREPO and SCIRICA, Circuit Judges

Submitted is appellant's notice of appeal, which has been construed as an application for a certificate of appealability under 28 U.S.C. § 2253(c)(1) in the above captioned case.

Respectfully,

Clerk

ORDER

The foregoing application for a certificate of appealability is denied. To the extent that appellant's Rule 60(b)(6) motion sought to advance substantive claims attacking his convictions and sentence, reasonable jurists would not find it debatable, Slack v. McDaniel, 529 U.S. 473, 484 (2000), that the motion was, in reality, an unauthorized second or successive motion to vacate sentence over which the District Court lacked jurisdiction. 28 U.S.C. § 2244(b); Gonzalez v. Crosby, 545 U.S. 524, 531-33 (2005). To the extent that appellant argued that he is actually innocent, McQuiggin v. Perkins, 569 U.S. 383, 392 (2013), could act as a gateway through which his constitutional claims may be addressed on the merits. See Satterfield v. District Attorney of Philadelphia, 872 F.3d 152, 160-61 (3d Cir. 2017). Reasonable jurists could not debate, however, that extraordinary circumstances did not exist for granting appellant's Rule 60(b)(6) motion, see Martinez-McBean v. Gov't of Virgin Islands, 562 F.2d 908, 911 (3d Cir. 1977). Appellant made no showing whatever that, "in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt," Schlup v. Delo, 513 U.S. 298, 329 (1995).

By the Court,

s/Michael A. Chagares
Circuit Judge

Dated: January 23, 2019
CJG/cc: Jeffrey L. Miller
Kenneth A. Osokow, Esq.



A True Copy:

Patricia S. Dodszeit

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

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-2917

JEFFREY L. MILLER,
Appellant

v.

SUPERINTENDENT FRACKVILLE SCI;
ATTORNEY GENERAL PENNSYLVANIA

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 3-09-cv-00584)

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 20, 2019
Lmr/cc: Jeffrey L. Miller
Kenneth A. Osokow

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JEFFERY L. MILLER,

:

Petitioner

:

CIVIL ACTION NO. 3:09-0584

:

v

:

(JUDGE NEALON)

R. SHANNON, et al.,

:

Respondents

ORDER

AND NOW, THIS 13th DAY OF AUGUST, 2018, upon consideration of Petitioner's July 19, 2018 motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(6), in which Petitioner argues that he is "irrefutably incarcerated for nonexistent crimes", (Doc. 42), and it appearing that the above captioned action was dismissed as untimely by Order dated November 30, 2009, (Doc. 27); Petitioner's motion for Reconsideration was denied by this Court on January 22, 2010, (Doc. 29); Petitioner's request for certificate of appealability was denied on June 9, 2010 by the United States Court of Appeals for the Third Circuit, (Doc. 41); and Petitioner's May 23, 2012, motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(6) was denied on September 12, 2012, (40), **IT IS HEREBY ORDERED THAT** Petitioner's July 29, 2018 motion for relief of judgment pursuant to Federal Rule of Civil Procedure 60(b)(6), (Doc. 42) is **DENIED** for the reasons set forth in the previous Courts' Orders, establishing that the original petition was untimely filed and Petitioner sets forth no

new evidence, law, or arguments to justify the untimeliness of his habeas petition.

/s/ William J. Nealon
United States District Judge