

CLD-073

January 17, 2019

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

C.A. No. 18-3040

DAVID KIRKLAND, Appellant

v.

UNITED STATES OF AMERICA

(D.N.J. Civ. No. 2-16-cv-07831)

Present: CHAGARES, RESTREPO and SCIRICA, Circuit Judges

Submitted is Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)

in the above-captioned case.

Respectfully,

Clerk

ORDER

Kirkland's application for a certificate of appealability is denied. See 28 U.S.C. § 2253(c). Jurists of reason would agree without debate that the District Court properly denied Kirkland's motion under 28 U.S.C. § 2255 for essentially the reasons set forth in its thorough opinion. See Miller-El v. Cockrell, 537 U.S. 322, 327 (2003).

By the Court,

s/Michael A. Chagares  
Circuit Judge

Dated: February 7, 2019

kr/cc: David Kirkland  
Mark E. Coyne, Esq.



A True Copy:

*Patricia S. Dodsweat*

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

APPENDIX B

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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DAVID KIRKLAND,

Petitioner,

v.

Civil Action No. 16-7831 (KSH)

UNITED STATES OF AMERICA,

Respondent.

**ORDER**

Petitioner David Kirkland has filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255, attacking a judgment and sentence imposed by this Court in *United States v. Kirkland*, No. 06-cr-0911, ECF No. 189 (D.N.J. entered Oct. 5, 2009), after a jury convicted him of transporting stolen goods across state lines. The Court has considered the motion, the records of proceedings in this matter, respondent's answer, and Kirkland's reply. For the reasons stated in the accompanying opinion, and for good cause shown,

**IT IS** on this 30th day of August, 2018,

**ORDERED** that the motion to vacate, set aside or correct sentence, is **DENIED**; and 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.

s/ Katharine S. Hayden

Katharine S. Hayden, U.S.D.J.

## APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT  
February 20, 2019

No. 18-3040

DAVID KIRKLAND,  
Appellant

v.

UNITED STATES OF AMERICA

(D.N.J. No. 2-16-cv-07831)

Present: CHAGARES, Circuit Judge

Motion by Appellant for 90 Days Extension of Time to file Petition for Rehearing.

Respectfully,  
Clerk/kr

ORDER

The foregoing motion is hereby granted.

By the Court,

s/ Michael A. Chagares  
Circuit Judge

Dated: February 25, 2019

kr/cc: David Kirkland  
Mark E. Coyne, Esq.

## APPENDIX D

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 18-3040

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DAVID KIRKLAND,  
Appellant

v.

UNITED STATES OF AMERICA

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On Appeal from the United States District Court  
for the District of New Jersey  
(D.N.J. No. 2-16-cv-07831)

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SUR PETITION FOR REHEARING

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Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,  
HARDIMAN, GREENAWAY, JR., KRAUSE, RESTREPO, BIBAS, PORTER,  
MATEY 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  
circuit in regular service not having voted for rehearing, the petition for rehearing by the  
panel and the Court en banc, is denied.

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\*Hon. Anthony J. Scirica's vote is limited to panel rehearing.

BY THE COURT,

s/Michael A. Chagares  
Circuit Judge

Dated: May 9, 2019  
Sb/cc: David Kirkland  
Mark E. Coyne, Esq.

## APPENDIX E

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT  
May 31, 2019

No. 18-3040

DAVID KIRKLAND,  
Appellant

v.

UNITED STATES OF AMERICA

(D.N.J. No. 2-16-cv-07831)

Present: CHAGARES, Circuit Judge

Motion by Appellant for Appointment of New Counsel for Filing  
a Petition for Writ of Certiorari to the Supreme Court.

Respectfully,  
Clerk/kr

ORDER

The foregoing motion is hereby denied.

By the Court,

s/Michael A. Chagares  
Circuit Judge

Dated: June 17, 2019

kr/cc: David Kirkland  
Mark E. Coyne, Esq.