

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In Re: Adib Eddie Ramez Makdessi, Prose - PETITIONER

EVIDENCE

Pet. 411 2 pages

Pet. 512 7 pages

TRANSCRIPTS

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APPENDIX

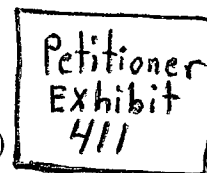
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Beach judge cuts informant's sentence by 13 years

VIRGINIA BEACH

A judge on Tuesday cut jailhouse informant Timothy Gurley's active sentence to less than half in part because he helped prosecutors in several cases over the past four years.

Gurley shot at his estranged wife and her companion at a crowded restaurant in 2004. Circuit Judge A. Bonwill Shockley cut Gurley's active sentence from 25 years to 12 years.

Gurley, 33, helped authorities in the prescription drug trafficking case of Dr. Sidney Loxley; the double-murder trial of Eddie Makdessi; and most recently, the prosecution of former Navy Lt. Michael

Petitioner

Lee Everage, who was convicted of bludgeoning his wife to death.

Norfolk police have questioned his reliability, however, according to court documents reported by The Pilot. Defense attorneys have also raised questions about the use of jailhouse informants.

Gurley's shooting victims had asked that Gurley's sentence not be reduced.

Prosecutor Scott Vachris asked Shockley to take into consideration Gurley's assistance but also mentioned that the victims did not want Gurley's sentence reduced. He didn't make any specific recommendation about reducing the sentence.

Shockley said she thought Gurley had changed from the "angry, angry man" she sentenced in 2006 for opening fire in a crowded restaurant.

She said she thought Gurley didn't understand the magnitude of what he had done at the time and said she "went way over" sentencing guidelines in imposing a penalty.

Shockley noted that prosecutors said several cases would not have gone forward without Gurley's cooperation.

"You do seem sincere about really wanting to help get some of these people off the street," Shockley said.

Vachris said that in the Everage case, Gurley provided authorities information including physical evidence such as money orders and letters from Everage.

Everage was convicted in 2008 of his wife's slaying and sentenced to 25 years.

"The irony is that sometimes the commonwealth needs people like Timothy Gurley to make sure justice is served in cases like Mr. Everage's," Vachris said.

Norfolk prosecutor Paula Bruns said Gurley also provided information in a rape case that went to trial in 2007, but which didn't result in a conviction.

Gurley took the stand Tuesday and asked Richard Hill, the man he shot twice in the restaurant, for his forgiveness.

"I never meant to hurt you," Gurley said.

His wife didn't attend the hearing but had sent an e-mail to Vachris informing him she did not support a reduction in Gurley's sentence.

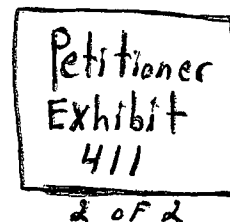
Gurley also talked about the repercussions he's experienced as a jailhouse informant.

He said he's housed in a windowless 7-by-14-foot cell in Chesapeake City Jail and receives daily threats.

"Why are you in solitary confinement?" his attorney, Barry McCracken, asked.

"It's the only place they have to put you," Gurley said.

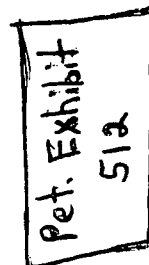
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The word of a jailhouse snitch: Can it be trusted?

In two recent high-profile murder trials, prosecutors asked two men who have been called liars to step onto a stage that demands truth and credibility - the witness stand.

Jamaal N. Skeeter claimed knowledge of crimes ranging from drug sales to murders to Michael Vick's dogfighting operation - information he tried to barter for a reduced sentence on his criminal charges. Prosecutors in Portsmouth considered his offers so suspect that they warned law enforcement in other jurisdictions away from using Skeeter as a witness.

Yet special prosecutors in Chesapeake bit: They recently called Skeeter as a key witness against Ryan Frederick, who was on trial in the death of Detective Jarrod Shivers.



Police in Norfolk labeled Timothy W. Gurley unreliable and a liar, according to court documents. But his long criminal history didn't prevent him from helping authorities in several high-profile cases including the prescription drug trafficking case of Dr. Sidney Loxley and the double murder trial of Eddie Makdessi, extradited from Russia to face charges that he killed his wife and her lover. In December, Gurley testified in the trial of Navy Lt. Michael Lee Everage, who was convicted of murder in the bludgeoning of his wife with a truck mirror.

Gurley hopes a judge will slash his 25-year sentence as thanks for his cooperation.

Defense lawyers decry the use of jailhouse informants - snitches, to some - contending that the possibility of reduced sentences and withdrawn charges in exchange for testimony provides a powerful incentive to fabricate evidence. At least one state, Illinois, has passed reform requiring pre-trial hearings to determine the validity of inmate information in capital murder cases. When jailhouse informants take the witness stand, jurors and judges are usually being asked to weigh the word of someone whose credibility is inherently flawed - a criminal.

Prosecutors say informants have access to jailhouse confessions and that their testimony can sometimes mean the difference between conviction and acquittal.

"It is our duty to put forth only the credible witnesses who have valuable testimony to provide, no matter who they are," said Norfolk's Commonwealth's Attorney Robert C. Slaughter III.

Jamaal Skeeter has lied about his own name.

Portsmouth court records show that when caught in a stolen car with stolen tags and stolen DVDs, Skeeter claimed to be one of his cousins.

After his June 2006 arrest on a charge of possession with intent to distribute heroin, Skeeter

decided to help law enforcement.

In letters written to his lawyers over more than a year, Skeeter tried to negotiate his way out of trouble by offering information.

He had helped detectives on a drug and gun bust, he wrote in a letter received by his public defender on June 30, 2006 - less than a week after his arrest. "I think in my point of view and the commonwealth point of view which the things I help them on that my case suge (sic) be nolle prosequi," he wrote, using the courthouse lingo for withdrawing charges.

By December 2006, Skeeter had offered information to the homicide squad. He included a detective's cell phone number in a letter to his attorney. In January 2007, he again urged his attorney to talk to prosecutors about his charges:

"I really want them to be drop, like dismissed... for one what I done for the Portsmouth Police Department," he wrote. In the margins of that letter, someone made a note: A homicide detective "has talked to Jamal (sic) twice within the last week and (the defendant) has no useful info." The last three words were underlined.

Skeeter's plan backfired in February 2007. Police charged him and a cousin with murder after Skeeter said he was present at the killing of the "old man in Lincoln Park" - Darnell Phillips Sr., a 53-year-old man who was shot and bled to death in October 2005.

That case unraveled after DNA matched neither Skeeter nor his cousin.

Prosecutors had become leery of the quality of Skeeter's information. In May 2007 Skeeter broke the news in a letter to his attorney, "The commonwealth are trying two say my credit is no good anymore."

In subsequent letters, Skeeter's offers of information grew steadily. He knew about murders in Norfolk and York County. He had information about the person who shot a police officer in Portsmouth.

"You may laugh when you hear this but the feds indicted football player Michael Vick in a dogfighting case," Skeeter wrote to his attorney in July 2007. He said he participated in dogfights at Vick's house against gang members from North Carolina.

Last month, Skeeter became a key witness in the Frederick trial in Chesapeake. Skeeter testified that Frederick knew he was shooting at a police officer when he fired the gun through the closed door of his home in January 2008. That bolstered the prosecution's case for capital murder, which could have meant life in prison for Frederick.

During the trial, prosecutors questioned Skeeter about whether he expected something in exchange for his testimony. Skeeter said he did not because local courts lost jurisdiction - and therefore the power to modify his sentence - when he was transferred from jail to prison.

But defense attorney James Broccoletti brought out on cross-examination that Skeeter continued to write letters to his attorney seeking a reduction in his sentence, even after his transfer to Lawrenceville Correctional Center.

Pet. Exhibit
512
af 2

Jurors apparently disregarded his testimony, convicting Frederick of voluntary manslaughter, not murder.

Paul Ebert is the commonwealth's attorney for Prince William County who was appointed to try the Frederick case, and who decided to call Skeeter.

A prosecutor in Chesapeake had also been scheduled to call Skeeter as a witness in another case the week before he was called in the Frederick trial, Ebert said. "The prosecutor told us he was credible," he said.

The decision to put him on the witness stand was, in part, a tactical one.

"He got us to the point where the defendant had to take the stand," Ebert said. With Skeeter's statement before the jury - that Frederick knew he was shooting at police - defense attorneys needed Frederick to deny it.

Ebert's first inkling that Skeeter's credentials were tainted came after Skeeter's testimony, Ebert said. Portsmouth Commonwealth's Attorney Earle Mobley came to him with a case file on Skeeter.

Mobley "felt he shouldn't be called," Ebert said. "He thought his credibility was questionable."

Prosecutors must weigh the credibility of a jailhouse informant before putting him on the witness stand, said Joel Branscom, president of the state's Commonwealth's Attorney's Association, and commonwealth's attorney for Botetourt County.

He has known some to help cases; others, Branscom said, he would not believe without an audio or video recording.

Jailhouse confessions are a real phenomenon, he said.

"When people go to jail they tend to talk about what's going on with each other," he said.

(Virginia Beach Commonwealth's Attorney Harvey Bryant said prosecutors in his office never rely solely on informants.)

⊗ "If that's all we have, we don't prosecute the case," he said. ⊗

Defense lawyers say informants testify unnecessarily and often without much investigation by prosecutors.

⊗ "I don't think they make a serious effort to determine whether a snitch is being honest," said B. Thomas Reed, who is scheduled to represent defendants in a dozen murder cases this year. In one past case, Reed said, he subpoenaed jail records that showed that a snitch was never in the same cell block as his client, and the closest they could have been was 15 feet from each other, with 30 people on each side listening. ⊗

Pet. Exhibit
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at 3

Some jailhouse informants have so much experience at testifying that they try to manipulate the criminal justice system. Defense lawyer Emily Munn said she has a client who has offered information in at least three cases.

"It's not their first time around," Munn said. "They know what they can be doing to help their cases."

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at 4

That's what Mary Kelly Tate finds so troubling about jailhouse informants - an obvious expectation that their testimony gets them a deal. Tate is director of the Institute for Actual Innocence at the University of Richmond School of Law.


"We wouldn't allow a defense attorney to pay someone to testify in support of his theory of a case," Tate said. "That's a moral hazard."

According to the Innocence Project, which works to overturn wrongful convictions, snitches testified in more than 15 percent of cases in which DNA evidence led to exonerations. A 2005 study by the Center on Wrongful Convictions at the Northwestern University School of Law found that jailhouse informants testified in almost half of the death penalty cases in which defendants were later exonerated.



Prosecutors weigh those issues too, Branscom said, and often come down on the side of putting all the information they have in front of a jury.



Prosecutors sometimes find it necessary to make a deal with an informant.

"You wouldn't want to use the guy convicted of mass murder to solve a car theft ring," Branscom said. "But vice versa might be the better part of valor."

 **Court documents** describe Timothy Gurley as a gang enforcer, a man who relished his association with the group and his career selling guns. As a youth, he was known to Norfolk gang squad investigators who tried to steer him down the right path, invited him to talk to community groups and even bought him Christmas presents. Gurley listed one gang investigator as a reference on his resume.

In December 1998, a Norfolk narcotics investigator received a letter from Gurley offering information on drug sales in exchange for intervention on his sentence for a threat conviction.

 Although the documents say Gurley was considered "charming, convincing, and an effective speaker," the investigator believed that Gurley's word was worthless. 

 "Gurley is considered to be unreliable and is a habitual liar," the document says. "... She will not pursue his offer." 

Yet Gurley has turned up repeatedly as a witness in some of the region's most high-profile murder trials.

In January 1999, Gurley testified as a defense witness during a suppression hearing for Eric Wilson, one of the men accused in the slaying of Navy wife Michelle Moore-Bosko. It was one of the most notorious murders of the time, with several men charged. Gurley testified that he had been paid by a police investigator to gather information on another of the defendants, Joseph Dick Jr. Gurley encouraged Dick to write letters that included incriminating statements. Then, after offering to put the letters in the mail, Gurley passed them on to police.

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at 5

Gurley did not testify during the trials.

Time passed, and Gurley got in trouble again: He was convicted of malicious wounding and other charges after opening fire on his estranged wife and her companion in a crowded Denny's in 2004. He missed his wife, but the man was severely wounded.

In March 2005, Gurley's mother called police and said her son had information against Sidney Loxley, a Chesapeake doctor accused of illegal distribution of prescription drugs. Gurley told a police detective that Loxley "approached him about finding someone to kill his ex-wife... and to cause physical harm to key government witnesses in his case," according to court papers.

Federal agents arranged for Gurley, rigged with a recording device, to be in the Virginia Beach jail infirmary at the same time as Loxley. But Loxley made no incriminating statements.

Gurley next surfaced in March 2006 as a witness in the trial of ^{Petitioner} Eddie Makdessi, a Virginia Beach man who was charged with murdering his wife and her lover in 1996. Makdessi collected \$700,000 in insurance money after his wife's death, and used it to travel the world, eventually settling in Russia. He was indicted in 2001 and returned to the United States in 2003.

Gurley testified that Makdessi admitted in jail to killing his wife, Elise, and Quincy Brown because she had been having an affair and he caught them having sex. Makdessi was convicted, fined more than \$200,000 and sentenced to life in prison. In a letter to The Virginian-Pilot, Makdessi denied ever speaking to Gurley.

In July 2006, Gurley was sentenced on his own charges from the Denny's shooting. A judge ordered him to serve 25 years.

By September 2006, his attorney had filed a motion seeking to modify Gurley's sentence because he had "provided substantial assistance to the commonwealth in a murder case." The hearing on Gurley's motion was rescheduled in February 2007 to "allow defendant to cooperate in a pending case in another jurisdiction." In June 2007, a judge signed an order for Gurley to stay in Norfolk, Virginia Beach or Chesapeake jails, rather than being transported to the state penitentiary. That meant local courts kept jurisdiction and could modify his sentence. As payments see (pet. 411)

Gurley was in jail at the same time as Navy Lt. Michael Lee Everage, who was charged in February 2007 with murder in the death of his wife.

By May 2007, Gurley had told his mother he was learning details about Everage's case. She called police.

Prosecutors called Gurley to testify during Everage's trial in Virginia Beach in December. Gurley was the only witness to provide motive, saying Everage couldn't stand the thought of losing his kids

and his Navy career.

Jurors convicted Everage of murder and recommended he serve 25 years.

Gurley's motion to reconsider his sentence is now scheduled to be heard on April 1.

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The Virginia Beach prosecutors who called Gurley to testify said they weighed his information and credibility just as they would any other witness.

Prosecutors Scott Vachris and Tabitha Anderson said they are reluctant to use informants and use them only when their testimony can be confirmed through other witnesses or evidence.

Gurley knew details of the crime that had not been publicly revealed, and he had evidence - letters, with Everage's fingerprints on them, describing how to plant evidence - that "totally corroborated what Gurley had said," Anderson said. His information also sealed the decision to prosecute Everage in Virginia Beach instead of Norfolk, because there had been some question about whether Robyn Everage was killed at her Norfolk home or where her body was discovered in woods along Shore Drive, Vachris said.

"As far as snitches go," Anderson said, "he's a good one."

Vachris knew that Gurley had testified three years ago in the Makdessi trial, but he said the prosecutor in that case, S. Catherine Dodson, told him that Gurley gave a credible statement.

"Gurley knew what he was doing," Vachris said. "The question is whether he was believable."



In a phone interview from jail, Everage, who maintains he is innocent, said Gurley committed perjury at his trial.

"He's a professional liar, a professional snitch," Everage said. "He knows what the police are looking for. He knows how to act, how to come across."

Gurley would "befriend people who had high-profile cases," Everage said. "Of course I find this out later because I'd never been in jail before."

In the end, at trial, jurors weigh the testimony of jailhouse informants.

Everage trial juror Joyann Drumm downplayed Gurley's testimony as "not significant" and pointed to his role in the Makdessi trial. "He didn't seem very credible," she said.

Edward Chittenden and Beverly Oden agreed. "We didn't even really talk about his testimony much," Oden said, adding that Gurley's statements were not nearly as persuasive as the other evidence presented against Everage.

Said Chittenden: "A convicted felon's testimony always has to be weighed very carefully by any jury, and fortunately we did not have to rely on that testimony to a significant extent."

Pilot writers Amy Jeter and Tim McGlone contributed to this report.

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Pet. Exhibit
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at 7

Source URL (retrieved on 03/21/2013 - 11:29): <http://hamptonroads.com/2009/02/word-jailhouse-snitch-can-it-be-trusted>

Links:

[1] <mailto:shawn.day@pilotonline.com>

"Habitual Liar" Gurley's testimony

1081

Prosecution's questions, For deliberate FALSE evidence

1 for now?

2 A Malicious wounding.

3 Q And what else?

4 A Aggravated -- aggravated discharge of a

5 firearm in an occupied dwelling and two counts of use

6 of a firearm in the commission of a felony and

7 attempted and possession of firearm.

8 Q Okay. And did you plead guilty or not

9 guilty?

10 A I pled guilty.

11 Q Is there any kind of plea agreement that

12 you've entered into? *FALSE evidence*

13 A No. *Lied, according to (Pet. 411 § 512)*

14 Q Have you been promised anything in

15 exchange for your testimony in this?

16 A No. *Lied FALSE evidence according to (Pet. 411 § 512)*

17 Q How much -- how much mandatory time do you

18 have that you know of? *FALSE evidence according to (Pet. 411 § 512)*

19 A Ten years. *From 100 years, life in prison*

20 Q When you pled guilty, did that have

21 anything to do with this case at all? *see Tr. 1092*

22 A No. *Lied FALSE evidence according to the Judge*

23 Q Have you -- at the point that you pled

24 guilty, had you even talked to -- talked to me? *and prosecution who paid him in (Pet. 411 § 512)*

25 A No. No. I pled guilty last June.

"Habitual Liar" Gurley's testimony
defense attorney's questions

1087

1 A No.

2 Q Did you tell him that it was completely
3 inconsistent with what you had seen on TV?

4 A No.

5 Q Did you tell him that you were charged
6 with so many crimes that you were trying to figure out (X)
7 how you might avoid a life sentence?

8 A No.

9 Q But you were, weren't you?

10 A Excuse me?

11 Q You were trying to figure out what you
12 could do to avoid a life sentence, were you not?

13 A No.

14 Q You know what I mean when I use the phrase
15 hopping on someone else's case, don't you?

16 A No. FALSE evidence according to (Pet. 411 & 512)

17 Q Never heard that before?


18 A Uh-uh.

19 Q So if I tell you that people in your
20 situation who are facing life sentences will do
21 anything and everything they can to hop on someone
22 else's case, you don't know what I'm talking about?

23 A Well, first of all, I'm not facing a life
24 sentence. Second of all, no, not really. I mean, I
25 know of average people -- I know things happen back

"Habitual Liar" Gurley's testimony
defense attorney's questions

1092

1 Q They already have. All right. So when
2 you add all that time up and combine it with your age,
3 you are facing a potential life in the penitentiary 
4 scenario, are you not?

5 MS. DODSON: Judge, I'm going to object to
6 the characterization.


7 THE COURT: Overruled.

8 A I wouldn't believe so. Okay. You're an
9 attorney. Okay. You've seen the court cases similar
10 to mine. It's a first time probation violation. Do
11 you -- I mean, do you honestly think that the judge
12 won't take into consideration that I have to serve a
13 minimum of ten years?

14

15 BY MR. REED:

16 Q My question to you, Mr. Gurley, is if you
17 were sentenced to all of the time on the charges to
18 which you have pled and you received the eighteen
19 years on the probation violation, you would then be a
20 hundred years old; isn't that true?

21 A I guess -- worst-case scenario I guess 
22 that could happen.

23 Q And it has not occurred to you and it
24 certainly didn't occur to you when you were in the
25 lockup with Mr. Makdessi that you needed to do

"Habitual Liar" Gurley's testimony
defense attorney's questions

1093

1 something to make sure that didn't happen?

2 A No offense, but that's the last thing on
3 your mind. You're dealing with your own problems.

4 Q And one way -- in fact, the only way to
5 deal with your own problems is to hop on somebody
6 else's case?

7 A Is that a question?

8 Q Isn't that true?

9 A No.

10 Q To go to your lawyer and tell your lawyer
11 that somebody who is charged with serious criminal
12 offenses has confessed to you, correct?

13 A I wouldn't say that.

14 Q And then your lawyer then goes to the
15 Commonwealth's attorney in the hopes that the
16 Commonwealth's attorney will come meet and interview
17 you and accept what you say as being credible; isn't
18 that true?

19 A I wouldn't say that's true either.

20 Q And when I asked you if you knew what I
21 meant when I said hopping on somebody's case, you knew
22 that's exactly what I meant?

23 A No. FALSE evidence according to (Pet. 411 § 512)

24 Q No?

25 A This is not something, you know, you do

March 14, 2006

DECEIVED Trial Judge's Ruling

1426

1. crimes for which he's been charged.

2. MR. REED: No follow-up, Your Honor.

3. THE COURT: Huh?

4. MR. REED: No response.

5. THE COURT: Okay. In addition to the
6. circumstantial evidence, there's also the
7. testimony of Mr. Gurley who says that the
8. defendant told him that he came over that night,
9. caught them, and shot him, stabbed her. It
10. becomes a question of credibility; and therefore,
11. the motion to strike is denied.

12. MR. REED: Note my exception, Your Honor.

13. The next procedural matter, I have
14. discussed with Mr. Makdessi the issue that came
15. up between counsel and the court with regard to
16. the composition of the jury. Mr. Makdessi is in
17. agreement with my proposal; and unless the court
18. needs to hear further on that -- perhaps --

19. Eddie, would you stand up, please.

20. Mr. Makdessi, I'm referring to the conversation
21. we had earlier this morning regarding the
22. composition of the jury. And without going into
23. the details, did you understand what I was
24. telling you about the jury?

25. THE DEFENDANT: Yes.

UNPUBLISHED

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

No. 19-6454

ADIB EDDIE RAMEZ MAKDESSI,

Petitioner - Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at
Richmond. M. Hannah Lauck, District Judge. (3:19-cv-00151-MHL-RCY)

Submitted: June 13, 2019

Decided: June 18, 2019

Before WYNN and HARRIS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Adib Eddie Ramez Makdessi, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

APPENDIX A

PER CURIAM:

Adib Eddie Ramez Makdessi, a Virginia inmate, seeks to appeal the district court's order dismissing his 28 U.S.C. § 2254 (2012) petition as an unauthorized, successive petition over which it lacked jurisdiction. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When, as here, the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Makdessi has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, and dismiss the appeal. We deny Makdessi's motion for transcripts at Government expense. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

ADIB EDDIE RAMEZ MAKDESSI,

Petitioner,

v.

Civil Action No. 3:19CV151

COMMONWEALTH OF VIRGINIA,

Respondent.

MEMORANDUM OPINION

Adib Eddie Ramez Makdessi, a Virginia inmate proceeding *pro se*, submitted this 28 U.S.C. § 2254 Petition. Makdessi challenges his 2006 convictions in the Circuit Court of the City of Virginia Beach for two counts of murder and related firearm counts. The Court previously denied another 28 U.S.C. § 2254 petition by Makdessi challenging these convictions. *See Makdessi v. Watson*, 682 F. Supp. 2d 633, 657 (E.D. Va. Feb. 4, 2010).

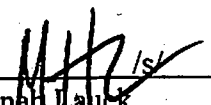
The Antiterrorism and Effective Death Penalty Act of 1996 restricted the jurisdiction of the district courts to hear second or successive applications for federal habeas corpus relief by prisoners attacking the validity of their convictions and sentences by establishing a “gatekeeping mechanism.” *Felker v. Turpin*, 518 U.S. 651, 657 (1996) (internal quotation marks omitted). Specifically, “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). The Court has not received authorization from the United States Court of Appeals for the Fourth Circuit to file the present § 2254 Petition. Therefore, the action will be DISMISSED WITHOUT PREJUDICE for want of jurisdiction.

APPENDIX B

An appeal may not be taken from the final order in a § 2254 proceeding unless a judge issues a certificate of appealability ("COA"). 28 U.S.C. § 2253(c)(1)(A). A COA will not issue unless a prisoner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). Because Makdessi fails to satisfy this standard, a certificate of appealability will be DENIED.

An appropriate Final Order will accompany this Memorandum Opinion.

Date: **MAR 21 2019**
Richmond, Virginia



M. Hannah Lauck
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

ADIB EDDIE RAMEZ MAKDESSI,

Petitioner,

v.

Civil Action No. **3:19CV151**

COMMONWEALTH OF VIRGINIA,

Respondent.

FINAL ORDER

In accordance with the accompanying Memorandum Opinion, it is hereby

ORDERED that:

1. The action is DISMISSED WITHOUT PREJUDICE for want of jurisdiction.
2. The Court DENIES a certificate of appealability.

Should Makdessi desire to appeal, a written notice of appeal must be filed within thirty (30) days of the date of entry hereof. Failure to file a written notice of appeal within that period may result in the loss of the ability to appeal.

The Clerk is DIRECTED to send the Memorandum Opinion and Final Order to Makdessi.

And it is so ORDERED.

Date: **MAR 21 2019**
Richmond, Virginia



M. Hannah Lauck
United States District Judge

FILED: July 23, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-6454
(3:19-cv-00151-MHL-RCY)

ADIB EDDIE RAMEZ MAKDESSI

Petitioner - Appellant

v.

COMMONWEALTH OF VIRGINIA

Respondent - Appellee

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX C