

ALD-268

August 29, 2019

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 19-1820

MARK A. PEREZ, Appellant

v.

SUPERINTENDENT COAL TOWNSHIP SCI; ET AL.

(E.D. Pa. No. 2-13-cv-06085)

Present: McKEE, SHWARTZ, and BIBAS, Circuit Judges

Submitted is Appellant's 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. We may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the District Court denies a habeas petition on procedural grounds without reaching the merits of the underlying claims, we will issue a certificate of appealability when the prisoner shows that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and debatable whether the District Court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Perez cannot make a credible showing that the District Court's denials of his § 2254 petition and Rule 60(b)(6) motion were incorrect. See Gonzalez v. Crosby, 545 U.S. 524, 535 (2005) (litigant moving under Rule 60(b)(6) must show extraordinary circumstances to justify reopening a final judgment); Hill v. Lockhart, 474 U.S. 52, 59 (1985); United States v. Reyes, 755 F.3d 210, 212 (3d Cir. 2014) (Alleyne v. United States, 133 S. Ct. 2151 (2013), does not apply retroactively to cases on collateral review); Lambert v. Blackwell, 387 F.3d 210, 247 (3d Cir. 2004) (claims of PCRA court error are not a basis

for federal habeas relief); see also 18 Pa. Cons. Stat. § 1102(c) (maximum sentence of forty years for attempted murder resulting in serious bodily injury).

By the Court,

s/Stephanos Bibas
Circuit Judge

Dated: September 17, 2019
MB/cc: Mark A. Perez
Robert M. Falin, Esq.
Ronald Eisenberg, Esq.



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