

APPENDIX - A

The SECOND ORDER of the UNITED STATES DISTRICT COURT for the Middle District
of PENNSYLVANIA. Cited AS Stubbs v. KAUFFMAN, 2018 U.S. Dist. LEXIS 35780
(M.D. Pa. 2018). DECIDED ON May 07, 2019, ARGUED JUNE 12, 2018

APPENDIX-A1

The SECOND ORDER of the COURT of Appeals - Third Circuit. Docket C.A.19-2270 COA DENIED ON
DECEMBER 16, 2019.

DLD-053

November 26, 2019

HENRY CHRISTOPHER STUBBS, III, Appellant

VS.

SUPERINTENDENT HUNTINGDON SCI

C.A. No. 19-2270

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ORDER

Appellant's application for a certificate of appealability is denied, for reasonable jurists would not debate the conclusion that Appellant's June 2018 motion filed pursuant to Federal Rule of Civil Procedure 60 does not "state[] a valid claim of the denial of a constitutional right." Slack v. McDaniel, 529 U.S. 473, 484 (2000). To the extent that Appellant's Rule 60 motion sought to reiterate the Brady claim from his habeas petition and/or raise any other claim attacking the validity of his conviction, reasonable jurists would not debate the District Court's conclusion that the Rule 60 motion was subject to dismissal for lack of jurisdiction as an unauthorized second or successive habeas petition. See Gonzalez v. Crosby, 545 U.S. 524, 530-31 (2005); Robinson v. Johnson, 313 F.3d 128, 139 (3d Cir. 2002). To the extent that the Rule 60 motion alleged a defect in the integrity of Appellant's habeas proceedings, that motion constituted a true Rule 60 motion; however, reasonable jurists would not debate the conclusion that Appellant failed to show that he is entitled to relief under the relevant subsections of Rule 60, see United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 270-71 (2010) (discussing subsection (b)(4)); Greene v. Superintendent Smithfield SCI, 882 F.3d 443, 449 n.7 (3d Cir. 2018) (discussing subsection (b)(6)); Pizzuto v. Ramirez, 783 F.3d 1171, 1180 (9th Cir. 2015) (discussing subsection (d)(3)). Appellant's motions seeking leave to file and/or admit certain documents are denied as unnecessary, for those documents are already part of the District Court record. Appellee's motion to strike Appellant's motion to admit documents is denied as moot.

By the Court,

s/ L. Felipe Restrepo
Circuit Judge

Dated: December 16, 2019

Lmr/cc: Henry Christopher Stubbs, III

James L. McMonagle, Jr.



A True Copy:

Patricia S. Dodszeit

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

APPENDIX - A2

THE SECOND ORDER of the Court of Appeals - Third Circuit, Docket C.A. 19-2270, REHEARING DENIED
ON MARCH 4, 2020.

ORDER

AND NOW, this 7th day of May, 2019, upon consideration of the petition for writ of habeas corpus (Doc. 13) filed by petitioner Henry Christopher Stubbs, III, challenging his 2003 Court of Common Pleas of Luzerne County conviction of two counts of first-degree murder and various related charges, Commonwealth v. Stubbs, CP-40-CR-844-2002 (Pa. Ct. Com. Pl. Luzerne Cty.), and it appearing that the court has previously determined the legality of such conviction, Stubbs v. Curley, et al., No. 1:10-CV-1849, 2012 WL 4103926 (M.D. Pa. 2010), and that petitioner fully exhausted the appeal of this determination by pursuing the matter in the United States Court of Appeals for the Third Circuit, Stubbs v. Curley, et al., No. 13-1894 (3d Cir. 2013), which denied his request for a certificate of appealability, and it further appearing that the instant filing constitutes a second or successive petition for writ of habeas corpus subject to the Antiterrorism and Effective Death Penalty Act ("AEDPA"), Pub.L. No. 104-132, 110 Stat. 1214 (Apr. 24, 1996), which specifically provides that "[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), see Burton v. Stewart, 549 U.S. 147, 153 (2007) (if a petitioner does not receive the required authorization from the court of appeals before filing a second or successive petition, the district court is "without jurisdiction to entertain it"); Robinson v. Johnson, 313 F.3d 128 (3d Cir. 2002) (holding that, absent an order from the circuit court granting leave to a petitioner, a district court does not have subject matter jurisdiction to entertain a petition for writ of habeas corpus that it deems to be a second or successive petition), and it being evident that petitioner has failed to comply with section 2244(b)(3)(A), it is hereby ORDERED that:

1. The petition (Doc. 13) is DISMISSED without prejudice to petitioner seeking approval from the court of appeals pursuant to 28 U.S.C. § 2244(b)(3)(A) to file a second or successive habeas petition.
2. All pending motions are DISMISSED.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 19-2270

HENRY CHRISTOPHER STUBBS, III,
Appellant

v.

SUPERINTENDENT HUNTINGDON SCI

(D.C. No.: 1-18-cv-00128)

SUR PETITION FOR REHEARING

Before: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY, PHIPPS and NYGAARD, **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.

* Judge Nygaard's vote is limited to panel rehearing only.

BY THE COURT,

s/ L. Felipe Restrepo

Circuit Judge

Date: March 4, 2020

Tmm/cc: Henry Christopher Stubbs, III

James L. McMonagle, Jr., Esq.

Ronald Eisenberg, Esq.