

08/31/2020

*AMENDED DLD-278

August 21, 2020
August 6, 2020

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 20-1899

UNITED STATES OF AMERICA

VS.

SEAN MOFFITT, Appellant

(W.D. Pa: Crim. No. 12-cr-00147-002)

Present: RESTREPO, PORTER and SCIRICA, Circuit Judges

Submitted are:

- *(1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1); and**
- *(2) Appellant's motion for removal of the District Judge**

in the above-captioned case.

Respectfully,

Clerk

ORDER

The foregoing request for a certificate of appealability is denied. When the District Court denies a habeas petition on procedural grounds without reaching the merits of the underlying claims, a certificate of appealability should issue 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).

While the District Court did not follow the procedures set forth in Santarelli, it did not arguably err in determining that it lacked jurisdiction over Moffitt's second § 2255 motion. See United States v. Santarelli, 929 F.3d 95, 106 (3d Cir. 2019) (describing procedure for handling second § 2255 motion filed while appeal is pending). Moreover, jurists of reason would not debate that Moffitt has not stated a valid claim of the denial of a constitutional right. See Strickland v. Washington, 466 U.S. 668, 687-96 (1984) (describing standard for ineffective assistance of counsel); United States v. Moffitt, 797 F. App'x 708, 714-15 (3d Cir. 2020) (describing evidence that Moffitt "was ready and eager to steal eight to twelve kilograms of cocaine."). Moffitt's motion for removal of the District Judge is denied.

By the Court,

s/Anthony J. Scirica
Circuit Judge

Dated: August 26, 2020

Lmr/cc: Laura S. Irwin
Sean Moffitt



A True Copy:

A handwritten signature in black ink that appears to read "Patricia S. Dodszuweit".

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

10/19/2020

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1899

UNITED STATES OF AMERICA

v.

SEAN MOFFITT,
Appellant

(W.D. Pa. No. 2-12-cr-00147-002)

SUR PETITION FOR REHEARING

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

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

10/19/2020

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/Anthony J. Scirica
Circuit Judge

Date: October 6, 2020

Lmr/cc: Laura S. Irwin
Sean Moffitt

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SEAN MOFFITT,)
Petitioner,) Civil Action No. 20-348
v.) Judge Cathy Bissoon
UNITED STATES OF AMERICA,)
Respondent.)

JUDGMENT ORDER

FINAL JUDGMENT hereby is entered pursuant to Rule 58 of the Federal Rules of Civil Procedure. This case has been marked closed.

IT IS SO ORDERED.

March 16, 2020

s\Cathy Bissoon

Cathy Bissoon
United States District Judge

cc (via First-Class U.S. Mail):

Sean Moffitt
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Inmate Mail/Parcels
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White Deer, PA 17887

**Additional material
from this filing is
available in the
Clerk's Office.**