

No. 19-2973
21-7239

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
DEC - 8 2021
OFFICE OF THE CLERK

Michael Arrington — PETITIONER
(Your Name)

VS.

U.S.A — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

U.S District (Middle) of Pennsylvania

U.S Court of Appeals for the Third Circuit

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☒ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☒ The appointment was made under the following provision of law: _____

Internal Operating Procedure 10.3.2, or

☒ a copy of the order of appointment is appended.

RECEIVED

MAR - 1 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Michael Arrington
(Signature)

RE: United States v. Arrington
C.A. No. 19-2973
Page 2

ORDER

Arrington's motion to file an application for a certificate of appealability ("COA") out of time, and his motion to file a revised COA application, and his Motion for Leave to Cure a Defect in Petitioner's Revised Application for C.O.A., are granted. His motions for a COA are granted only as to the claim that his attorney was ineffective for failing to inform him that the decision to testify was his alone. See United States v. Leggett, 162 F.3d 237, 245 (3d Cir. 1998). In their briefs, the parties should also address whether the District Court erred by failing to hold an evidentiary hearing on the claim. See Rule 8 of the Rules Governing Section 2255 Proceedings. The motions for a COA are denied as to all of the other claims. Jurists of reason would not debate the District Court's conclusion that Arrington did not show that his Sixth Amendment right to the effective assistance of counsel was violated. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Strickland v. Washington, 466 U.S. 668, 687, 694 (1984). In particular, jurists of reason would not debate that: (1) the District Court did not abuse its discretion in denying his discovery request where the request was based on speculation, see Rule 6 of the Rules Governing Section 2255 Proceedings; cf. Bracy v. Gramley, 520 U.S. 899, 908-09 (1997); (2) the District Court did not abuse its discretion in denying Arrington's motions under Rule 59(e) and Rule 15(a); and (3) Arrington did not show that cumulative error "had a substantial and injurious effect or influence in determining the jury's verdict," see Albrecht v. Horn, 485 F.3d 103, 139 (3d Cir. 2007). The Clerk will request counsel to represent Arrington on appeal under Internal Operating Procedure 10.3.2.

By the Court,

s/ L. Felipe Restrepo
Circuit Judge

Dated: September 2, 2020
PDB/cc: Michael Arrington
Tadhg Dooley, Esq.
David R. Roth, Esq.
Michael A. Consiglio, Esq.



A True Copy:

Patricia S. Dodszeuweit

Patricia S. Dodszeuweit, Clerk

Simon v. Gov. of the Virgin Islands
929 F.3d 118 (3rd Cir. 2019)
at 127-

Wharton
722 Fed. Appx. 268
3rd Cir. 2018
at pg 30

A defendant's disposition to make a ~~well-balanced~~ well-behaved and peaceful adjustment to life in prison is itself an aspect of his character that is by its nature relevant to the sentencing determination. (made prima facie showing)

Sileo
702 Fed. Appx. 95
3rd Cir. 2016

Appellant has not provided any evidence that the ~~mis~~ alibi instruction played a conceivable -- let alone a ~~substantial~~ ^{alibi} substantial role in the jury's decision and that adding a proper ^{alibi} jury instruction would have affected the outcome in any way.

Copied: Sileo ↑ 7-19-21 2:00pm
Pulido, 69 F3d 192 (7th Cir. 1995) 7-19-21 8:01

Reilly

1982 U.S. Dist. 16065 (2nd Dist. 1982)

... sufficient evidence means more than a scintilla. It means such relevant evidence ~~that~~ that a reasonable mind may accept as adequate to support a conclusion.

Copied: Iniguez v. Davis, 2015 Dist. 106890 (9th Dist. 2015)

Woolfolk
197 F3d 900
11-908

~~However, when that~~ However, when that estimation is based on an erroneous...
very "diminished reliability."

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