UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1876

SHANNON HARRIS,
Appellant

v.

WARDEN JAMES T. VAUGHN CORRECTIONAL CENTER;
ATTORNEY GENERAL DELAWARE

(D.C. Civ. No. 1-18-cv-00273)

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

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* As to panel rehearing only.

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

Dated: November 23, 2021
CLW/arr/cc: SH; CSH

CLD-281 September 30, 2021

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **21-1876**

SHANNON HARRIS, Appellant

VS.

WARDEN JAMES T. VAUGHN CORRECTIONAL CENTER, ET AL.

(D. Del. Civ. No. 1:18-cv-00273)

Present: RESTREPO, MATEY and SCIRCA, Circuit Judges

Submitted is Appellant's notice of appeal, which may be construed as a request for a certificate of appealability under 28 U.S.C. § 2253(c)(1)

in the above-captioned case.

Respectfully,

Clerk

ORDER

The request for a certificate of appealability is denied because jurists of reason would not debate the District Court's decision to deny Harris's claims for substantially the same reasons provided by the District Court. See Slack v. McDaniel, 529 U.S. 473, 484 (2000). Namely, Harris's claim that he was denied the right to testify at trial is procedurally defaulted, and Harris did not show cause and prejudice or a miscarriage of justice necessary to overcome the default. See, e.g., Rolan v. Coleman, 680 F.3d 311, 317 (3d Cir. 2012); Leyva v. Williams, 504 F.3d 357, 366 (3d Cir. 2007). Moreover, jurists of reason would agree that Harris's claims of ineffective assistance of trial and appellate counsel and prosecutorial misconduct lack merit. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (describing standard for ineffective assistance of counsel claims); Smith v. Robbins, 528 U.S. 259, 285 (2000) (applying Strickland standard to claim of ineffective assistance of appellate counsel); Werts v. Vaughn, 228 F.3d 178, 203 (3d Cir. 2000) (reasoning that "counsel cannot be deemed ineffective for failing to raise . . . meritless claim[s]"); Marshall v. Hendricks, 307 F.3d 36, 63 (3d Cir.

2002) (reasoning that for a prosecutor's alleged misconduct to warrant habeas relief, it must implicate and undermine a specific constitutional right or otherwise "so undermine[] the reliability of a verdict that it constitutes a due process violation"). Jurists of reason would likewise agree that, to the extent it is cognizable, Harris's challenge to the withdrawal of appellate counsel is procedurally defaulted and meritless, see Rolan, 680 F.3d at 317; Anders v. California, 386 U.S. 738, 744 (1967), and that Harris's challenge to the Delaware Supreme Court's evidentiary ruling is not cognizable in federal habeas review, Estelle v. McGuire, 502 U.S. 62, 67-68 (1991).

By the Court,

s/Anthony J. Scirica
Circuit Judge

A True Copy:

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

Dated: October 8, 2021
CLW/cc: Mr. Shannon Harris
Carolyn S. Hake, Esq.