United States Supreme Court

Dana Johnson,
Petitioner

V.

District Attorney of Allegheny County, et. al.
Respondent

Civ No. 22-1999
W.D. Pa. Civ no 2:20-cv-00981

Motion For Extension of Time

① Petitioner request that this Honorable Court grant an extension of time of 60 days to file his writ of certiorari for the following reasons

② Petitioner first wrote to this Court in ~~December~~ February of 2023 asking for a indigent Packet with a guide to file a writ of certiorari, this Court sent a packet in ~~April~~ March but Petitioner never recieved it because it was sent back return to sender due to incorrect correspondence numbers. Petitioner then wrote again in March requesting a packet and you sent it but it was sent back return to sender due to missing time codes. Petitioner then wrote again a third time in April explaning that mail wasn't being forwarded to him from this Court. In may Petitioner finally recieved the Packet for a writ of certiorari, which leaves a little over 30 days for Petitioner to file his Petition

③ Petitioner is a Pro-se litigant with very little knowledge of the law and prays that this Court grant an additional 60 days so he can properly file his Writ of Certiorari petition and meet all necessary requirments.

④ Petitioner has attached previous letters and unacceptable corrospondence forms hoping to show due dilligence on what prevented him from meeting the deadline.

Proof of Service

I hereby certify that I have served a true copy of the foregoing documents upon the following persons and in the manner listed below, which satisfies the requirements of Pa. R.A.P. 121 (b) and 1514 (c) service upon goverment agency

Service by U.S. Certified Mail, First class postage prepaid to:

Office of The Clerk
Supreme Court of the United States
Washington, D.C. 20543

Respectfully Submited

Dana Johnson

Dana Johnson # LE 7859
1200 Mokychic Drive
Collegeville, PA 19426

Date: 6-2-23

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-1999

DANA JOVAN JOHNSON,

Appellant

v.

DISTRICT ATTORNEY ALLEGHENY COUNTY, ET AL.

(W.D. Pa. Civ. No. 2:20-cv-00981)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, JORDAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES and AMBRO*, Circuit Judges

The foregoing petition for panel rehearing and for rehearing en banc is denied. See 3d Cir. I.O.P. 8.3, 9.2, & 9.3. As noted in the order denying Appellant's application for a certificate of appealability, jurists of reason would not debate the District Court's decision to deny his habeas petition. *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Specifically, reasonable jurists would not debate that Appellant's ineffective assistance of counsel and due process claims are either procedurally defaulted or meritless. *See Coleman v. Thompson*, 501 U.S. 722, 735 n.1 (1991); *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

More specifically, reasonable jurists would not debate that Appellant's claims regarding trial preparation, cross-examination, his opportunity to testify, witness

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

credibility, his identification, and involuntary manslaughter jury instructions are all procedurally defaulted. *Coleman*, 501 U.S. at 735 n.1. *Martinez v. Ryan*, 566 U.S. 1 (2012), cannot excuse the default because Appellant has failed to demonstrate that the claims are substantial. 566 U.S. at 14. In addition, jurists of reason would agree that Appellant's claim regarding the conflict of interest is without merit, since Appellant has failed to demonstrate that the past representation had any impact on the defense strategy in a completely unrelated proceeding. See *United States v. Gambino*, 864 F.2d 1064, 1070 (3d Cir. 1988). And reasonable jurists would not debate that Appellant's claims regarding counsel's use of unauthorized defenses, counsel's failure to call Latrese Winstead, and the Commonwealth's theory of the crime are without merit, since Appellant has failed to show that counsel's performance was deficient. *See Strickland*, 466 U.S. at 689 ("[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.").

Additionally, even if jurists of reason could debate that Appellant's claims regarding Donald Macon's trial testimony, the expert witness, and jury instructions were procedurally defaulted, jurists of reason would not debate that those claims do not "state a valid claim of the denial of a constitutional right." *Slack*, 529 U.S. at 484. First, Johnson challenges only Macon's credibility, not the underlying admissibility of Macon's testimony. Johnson has provided no reason why that testimony would have been inadmissible. Second, Johnson cannot demonstrate any prejudice relating to trial counsel's failure to call an expert witness to testify about the impossibility of a close-range shooting because, contrary to Johnson's assertions, there was no evidence presented that the victim was shot at close range. Third, because Johnson's request for (1) a prompt complaint jury instruction and (2) a *Kloiber* instruction are inapplicable to Johnson's case, reasonable jurists could not find trial counsel ineffective for failing to request these instructions. *See Com. v. Snoke,* 580 A.2d 295, 298 (1990); *Com. v. Paolello*, 665 A.2d 439, 455 (1995).

By the Court,

s/Thomas L. Ambro
Circuit Judge

Date: March 21, 2023

kr/cc: Dana Jovan Johnson
Rusheen R. Pettit, Esq.
Ronald Eisenberg, Esq.

BLD-004

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **22-1999**

DANA JOVAN JOHNSON, Appellant

v.

DISTRICT ATTORNEY ALLEGHENY COUNTY, ET AL.

(W.D. Pa. Civ. No. 2:20-cv-00981)

Present: AMBRO, KRAUSE, and PORTER, 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 foregoing request for a certificate of appealability is denied because jurists of reason would not debate the District Court's decision to deny his habeas petition. Miller-El v. Cockrell, 537 U.S. 322, 338 (2003) (citing Slack v. McDaniel, 529 U.S. 473, 484 (2000)). Specifically, reasonable jurists would not debate that Appellant's ineffective assistance of counsel and due process claims are either procedurally defaulted or meritless. See Coleman v. Thompson, 501 U.S. 722, 735 n.1 (1991); Strickland v. Washington, 466 U.S. 668, 687 (1984).

In particular, jurists of reason would not debate that Appellant's claims regarding Donald Macon's trial testimony, the expert witness, and jury instructions are procedurally defaulted and cannot be excused pursuant to Martinez v. Ryan, 566 U.S. 1 (2012). Martinez is inapplicable to these claims because it "applies only to attorney error causing procedural default during initial-review collateral proceedings, not collateral appeals," and these claims were abandoned on PCRA appeal. Norris v. Brooks, 794 F.3d 401, 404–05 (3d Cir. 2015) (citing Martinez, 566 U.S. at 16). In addition, reasonable jurists

would not debate that Appellant's claims regarding trial preparation, cross-examination, his opportunity to testify, witness credibility, his identification, and involuntary manslaughter jury instructions are all procedurally defaulted. Coleman, 501 U.S. at 735 n.1. Martinez cannot excuse the default because Appellant has failed to demonstrate that the claims are substantial. 566 U.S. at 14. Additionally, jurists of reason would agree that Appellant's claim regarding the conflict of interest is without merit, since Appellant has failed to demonstrate that the past representation had any impact on the defense strategy in a completely unrelated proceeding. See United States v. Gambino, 864 F.2d 1064, 1070 (3d Cir. 1988). Finally, reasonable jurists would not debate that Appellant's claims regarding counsel's use of unauthorized defenses, counsel's failure to call Latrese Winstead, and the Commonwealth's theory of the crime are without merit, since Appellant has failed to show that counsel's performance was deficient. See Strickland, 466 U.S. at 689 ("[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.").

By the Court,

s/THOMAS L. AMBRO
Circuit Judge

Dated: October 28, 2022
Sb/cc: Dana Jovan Johnson
Rusheen R. Pettit, Esq.

A True Copy:

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