

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1571

UNITED STATES OF AMERICA

v.

PAUL E. PAVULAK,
Appellant

(D.C. No. 1-09-cr-00043-001)

SUR PETITION FOR REHEARING

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

BY THE COURT,

s/ Peter J. Phipps

Circuit Judge

Dated: April 27, 2022
Lmr/cc: Whitney C. Cloud
Alexander P. Ibrahim
Paul E. Pavulak

DLD-016

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **21-1571**

UNITED STATES OF AMERICA

VS.

PAUL PAVULAK, Appellant

(D. Del. Civ. No. 1:09-cv-00043-001)

Present: KRAUSE, MATEY and PHIPPS, Circuit Judges

Submitted are:

- (1) Appellant's Motion to Proceed In Forma Pauperis for the Purpose of Applying for Appointment of Counsel; and
- (2) Appellant's Application for a Certificate of Appealability

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 reject Appellant's motions seeking relief under Federal Rules of Civil Procedure 60(b) and 60(d)(3). See 28 U.S.C. § 2253(c)(2); Bracey v. Superintendent Rockview SCI, 986 F.3d 274, 282-83 (3d Cir. 2021). Appellant's motions, which attacked his underlying conviction and sentence, constituted unauthorized second or successive motions under 28 U.S.C. § 2255. See Gonzalez v. Crosby, 545 U.S. 524, 530-32 (2005). To bring a second or successive § 2255 motion, a petitioner must obtain authorization from the court of appeals. See 28 U.S.C. § 2255(h). Because Appellant did not have that authorization, the District Court correctly rejected his motions. See Robinson v. Johnson, 313 F.3d 128, 139-40 (3d Cir. 2002). Even if Appellant's motions were construed as attacking defects in his habeas

proceedings, relief under Rule 60(b) would not be warranted because Appellant had an opportunity to raise his current arguments in his appeal from the denial of his § 2255 motion. See United States v. Fiorelli, 337 F.3d 282, 288 (3d Cir. 2003) (recognizing that a Rule 60(b) motion may not be used as a substitute for an appeal). To the extent that Appellant seeks appointment of counsel, and to proceed in forma pauperis for the purpose of seeking counsel appointment, his requests are denied.

By the Court,

s/ Peter J. Phipps
Circuit Judge

Dated: December 6, 2021
Lmr/cc: Whitney C. Cloud
Alexander P. Ibrahim
Paul E. Pavulak



A True Copy:

Patricia A. Dodszeit

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

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT
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December 6, 2021

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RE: USA v. Paul Pavulak
Case Number: 21-1571
District Court Case Number: 1-09-cr-00043-001

ENTRY OF JUDGMENT

Today, **December 06, 2021** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,

Patricia S. Dodszuweit, Clerk

By: s/Laurie
Case Manager
267-299-4936

cc: John A. Cerino