

No. 21A-

IN THE
Supreme Court of the United States

MAURICE ANDREWS,

Applicant,

v.

DISTRICT ATTORNEY MONTGOMERY COUNTY,

Respondent.

ON APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

**APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI**

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APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR WRIT OF CERTIORARI

To the Honorable Samuel A. Alito, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the Third Circuit:

Applicant, Maurice Andrews, through undersigned counsel and pursuant to Supreme Court Rules 13.5 and 30, respectfully applies for a 60-day extension of time from November 22, 2022, to January 21, 2023, to file his petition for a writ of certiorari. In support of this application, the following is averred:

1. On June 21, 2022, the Third Circuit Court of Appeals denied Applicant's application for a certificate of appealability with respect to the Eastern District of Pennsylvania's denial of his timely petition for federal habeas relief pursuant to 28 U.S.C. § 2254.
2. The order denying Applicant's application for a certificate of appealability is attached as Exhibit A. *See* Sup. Ct. R. 13.5.
3. Applicant's habeas petition involved a challenge to his state court murder conviction in the Montgomery County, Pennsylvania, Court of Common Pleas.
4. Applicant filed a timely petition for rehearing on August 3, 2022.
5. The Third Circuit denied the petition for rehearing on August 24, 2022.
6. The order denying rehearing is attached as Exhibit B.

7. The petition for writ of certiorari is therefore due on November 22, 2022.
See Sup. Ct. R. 30.1.
8. This Court has jurisdiction under 28 U.S.C. § 1254(1).
9. The undersigned counsel is in need of additional time to complete the petition for unforeseen health reasons.
10. Counsel had surgery to repair badly torn cartilage in his left shoulder last week on September 29, 2022.
11. The surgery was scheduled only about two weeks in advance as the condition of the shoulder rapidly deteriorated faster than expected, making the surgery somewhat urgent.
12. Accordingly, counsel will be in a shoulder immobilizer, which is more restrictive than an ordinary sling, for at least four to six weeks.
13. The immobilizer makes it very difficult to type in general, and the pain from surgery makes it difficult to work for extended periods of time.
14. Counsel has unfortunately also had two procedures on the right shoulder, making the recovery even more difficult than normal.
15. Accordingly, counsel is in need of additional time to recover from the surgery and complete the petition in this matter.
16. Counsel is essentially a solo practitioner in that counsel works with two other attorneys, but each attorney is responsible for his or her own

caseload, and there are no other attorneys in counsel's firm that are available to complete the petition.

17. Applicant intends to raise the important issue of whether a habeas petitioner claiming the ineffective assistance of counsel must show prejudice from trial counsel's deficient performance where the trial court provided incorrect jury instructions which allowed the jury to convict Applicant of conspiracy to commit murder for conduct which was not illegal.

18. Applicant's counsel has spoken with counsel for Respondent, Adrienne D. Jappe, Esquire, and Assistant District Attorney Jappe indicated that she does not object to an extension.

19. Given counsel's unforeseen medical issues, Applicant respectfully requests an additional sixty days to complete the petition for writ of certiorari in this matter pursuant to Rule 13.5.

WHEREFORE, Applicant Maurice Andrews respectfully requests that the Court grant the application and extend the deadline for filing a petition for writ of certiorari from November 22, 2022, to January 21, 2023.

/s Zak Goldstein

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EXHIBIT A

CLD-164

June 2, 2022

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 22-1339

MAURICE ANDREWS, Appellant

v.

DISTRICT ATTORNEY MONTGOMERY COUNTY;
SUPERINTENDENT COAL TOWNSHIP SCI;
ATTORNEY GENERAL OF PENNSYLVANIA

(E.D. Pa. Civ. No. 2:20-cv-04326)

Present: AMBRO, SHWARTZ, and BIBAS, Circuit Judges

Submitted are:

- (1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1); and
- (2) Appellees' response

in the above-captioned case.

Respectfully,

Clerk

ORDER

Appellant's request for a certificate of appealability ("COA") is denied because jurists of reason would not debate the denial of his claims. See 28 U.S.C. § 2253(c)(2). See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000). We make that determination largely for the reasons explained by the Magistrate Judge. We add only one comment on appellant's first claim that trial counsel should have objected to the trial court's instruction on conspiracy to commit third-degree murder. Appellant takes issue, inter alia, with portions of the instructions that referred to an agreement between appellant and Michael Hinton to "isolate, confront or accost" and to "confront" the victim. Appellant argues that the instructions were deficient because these activities are not necessarily illegal. But the relevant question is whether appellant and Hinton agreed on conduct that satisfies the definition of third-degree murder.

Commonwealth v. Fisher, 80 A.3d 1186, 1191, 1195 (Pa. 2013). The only evidence of any agreement between appellant and Hinton was that the two armed themselves and then went to Brian's Café because appellant said that he wanted to kill the victim, which appellant then did. (N.T., 6/26/14, 144–45.) That evidence showed an agreement to commit conduct that constituted at least third-degree murder, and there was no evidence from which the jury could have found that appellant and Hinton agreed on conduct that would not constitute third-degree murder. Thus, jurists of reason would not debate whether trial counsel had any basis to object to these instructions or whether appellant was prejudiced.

By the Court,

s/Stephanos Bibas

Circuit Judge

Dated: June 21, 2022

Sb/cc: All Counsel of Record



A True Copy:

Patricia S. Dodszeweit

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

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



UNITED STATES COURT OF APPEALS

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June 21, 2022

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RE: Maurice Andrews v. District Attorney Montgomery County, et al

Case Number: 22-1339

District Court Case Number: 2-20-cv-04326

ENTRY OF JUDGMENT

Today, **June 21, 2022** 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,

s/Patricia S. Dodszuweit,
Clerk

By: Stephanie
Case Manager
267-299-4926

EXHIBIT B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-1339

MAURICE ANDREWS
Appellant

v.

DISTRICT ATTORNEY MONTGOMERY COUNTY;
SUPERINTENDENT COAL TOWNSHIP SCI;
ATTORNEY GENERAL OF PENNSYLVANIA

E.D. Pa. 2:20-cv-04326

SUR PETITION FOR REHEARING

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

The petition for rehearing filed by Appellant in the above-captioned 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/Stephanos Bibas
Circuit Judge

Dated: August 24, 2022
Tmm/cc: Zak T. Goldstein, Esq.
Adrienne D. Jappe, Esq.
Ronald Eisenberg, Esq.