

ALD-073

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 22-3047

SCOTT ANDERSON, Appellant

v.

SUPERINTENDENT SMITHFIELD SCI, ET AL.

(M.D. Pa. Civ. No. 1:21-cv-00825)

Present: HARDIMAN, RESTREPO, and BIBAS, Circuit Judges

Submitted is appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1)

in the above-captioned case.

Respectfully,

Clerk

ORDER

The foregoing application for a certificate of appealability is denied. See 28 U.S.C. § 2253(c). Jurists of reason would agree without debate that the District Court correctly dismissed the petition as untimely, see 28 U.S.C. § 2244(d)(1)(A), and that Anderson was not entitled to equitable tolling or any other alteration to the filing deadline, see Holland v. Florida, 560 U.S. 631, 649–50 (2010) (allowing equitable tolling where extraordinary circumstances prevented timely filing despite a petitioner’s reasonable diligence); see also McQuiggin v. Perkins, 569 U.S. 383, 386 (2013) (holding that “actual innocence” is a “gateway through which a petitioner may pass” when seeking relief in an otherwise untimely petition); Wallace v. Mahanoy, 2 F.4th 133, 151 (3d Cir. 2021) (“To satisfy the demanding actual innocence exception, a petitioner must (1) present new, reliable evidence of his innocence; and (2) show by a preponderance of the evidence that it is

more likely than not that no reasonable juror would have convicted him . . . in light of the new evidence.” (emphasis added & citation omitted)).

By the Court,

s/ Thomas M. Hardiman
Circuit Judge

Dated: February 1, 2023
Sb/cc: Scott Anderson
Courtney E. Hair, Esq.



A True Copy:

Patricia A. Dodszeit

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