

CLD-176

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **23-1741**

JOSHUA STEPHENSON, Appellant

VS.

WARDEN JAMES T VAUGHN CORRECTIONAL CENTER, ET AL.

(D. Del. Civ. No. 1-20-cv-00443)

Present: SHWARTZ, MATEY, and FREEMAN, Circuit Judges

Submitted are:

- (1) 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);
 - (2) Appellant's document in support of appeal;
 - (3) Appellant's letter amending grounds for appeal;
 - (4) Appellant's first motion for appointed counsel; and
 - (5) Appellant's second motion for appointed counsel
- in the above-captioned case.

Respectfully,

Clerk

ORDER

The foregoing request for a certificate of appealability is denied. See 28 U.S.C. § 2253(c). Jurists of reason would agree, without debate, that Appellant's claims are procedurally defaulted, and Appellant did not show cause and prejudice or a miscarriage of justice necessary to overcome the default. See Slack v. McDaniel, 529 U.S. 473, 484

CLD-176

RE: Joshua Stephenson v. Warden James T Vaughn Correctional Center, et al.

C.A. No. 23-1741

Page 2

(2000); Strickland v. Washington, 466 U.S. 668, 687 (1984); Martinez v. Ryan, 566 U.S. 1 (2012). Jurists of reason would also agree, without debate, that Appellant's subsequent filing, see ECF No. 49, which was styled as a new petition for habeas relief but which is best construed as a Rule 59(e) motion, was properly denied, as it merely reasserted the same claims raised in his habeas petition. See Lazaridis v. Wehmer, 591 F.3d 666, 669 (3d Cir. 2010) (per curiam). Appellant's request for the appointment of counsel is denied. See Reese v. Fulcomer, 946 F.2d 247, 263–64 (3d Cir. 1991).

By the Court,

s/ Arianna J. Freeman

Circuit Judge

Dated: July 24, 2023

Amr/cc: All counsel of record



A True Copy:

Patricia S. Dodszeuweit

Patricia S. Dodszeuweit, 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
21400 UNITED STATES COURTHOUSE
601 MARKET STREET

PHILADELPHIA, PA 19106-1790

Website: www.ca3.uscourts.gov

TELEPHONE

215-597-2995

July 24, 2023

Elizabeth R. McFarlan, Esq.
Office of Attorney General of Delaware
Delaware Department of Justice
820 N French Street
Carvel Office Building
Wilmington, DE 19801

Joshua Stephenson
James T. Vaughn Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: Joshua Stephenson v. Warden James T Vaughn Correctional Center, et al
Case Number: 23-1741
District Court Case Number: 1-20-cv-00443

ENTRY OF JUDGMENT

Today, **July 24, 2023** 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/Alicia

Case Manager

267-299-4948

Cc: Randall C. Lohan

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOSHUA STEPHENSON,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 20-443-GBW
	:	
ROBERT MAY, Warden,	:	
and ATTORNEY GENERAL	:	
OF THE STATE OF	:	
DELAWARE,	:	
	:	
Respondents.	:	

MEMORANDUM ORDER

At Wilmington this 5th day of April, 2023, having considered

Petitioner's second and incomplete § 2254 petition (D.I. 49) that he filed in the instant proceeding after the Court's denial of his original § 2254 Petition (D.I. 47; D.I. 48);

IT IS HEREBY ORDERED that, to the extent Petitioner's second and partially completed petition presents the same arguments challenging his 2015 convictions that the Court already considered and denied, the petition (D.I. 49) is **DISMISSED** as an unauthorized second or successive habeas petition. *See* 28 U.S.C. § 2244(b)(3)(A); *Benchoff v. Colleran*, 404 F.3d 812, 817 (3d Cir. 2005) (explaining that a habeas petition is classified as second or successive within the meaning of 28 U.S.C. § 2244 if a prior petition has been decided on the merits, the prior and new petitions challenge the same

conviction, and the new petition asserts a claim that was, or could have been, raised in a prior habeas petition).

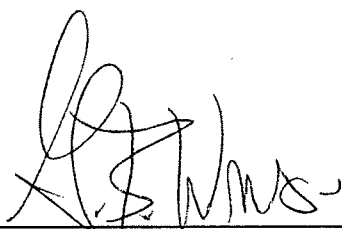
IT IS FURTHER ORDERED that, to the extent the Court should liberally construe the incomplete petition to be a request for a certificate of appealability, the request (D.I. 49) is denied for the same reasons provided in the Court's Memorandum Opinion and Order dated March 9, 2023. (*See* D.I. 47 at 41; D.I. 48)

IT IS FURTHER ORDERED that, to the extent the second petition should be liberally construed as a Rule 59(e) motion to reconsider the Court's decision, the motion (D.I. 49) is denied. Rule 59(e) is "a device [] used to allege legal error,"¹ and may only be used to correct manifest errors of law or fact or to present newly discovered evidence. *See Howard Hess Dental Labs, Inc. v. Dentsply Int'l Inc.*, 602 F.3d 237, 251 (3d Cir. 2010). The scope of a Rule 59(e) motion is extremely limited, and may not be used as an opportunity to relitigate the case. *See Blystone v. Horn*, 664 F.3d 397, 414 (3d Cir. 2011); *see also Brambles USA Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990). The moving party must show one of the following in order to prevail on a Rule 59(e) motion: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court issued its order; or (3) the need to correct a clear error of law or fact or to prevent a manifest injustice. *See Max's Seafood Café v.*

¹*Fiorelli*, 337 F.3d at 288.

Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). for being untimely. Here, the second petition merely re-asserts the same arguments contained in Petitioner's original § 2254 Petition and, therefore, does not provide any reason warranting reconsideration of the Court's dismissal of his original § 2254 Petition.

IT IS FURTHER ORDERED THAT, to the extent one is required, the Court declines to issue a certificate of appealability. 28 U.S.C. § 2253(c)(2); *see also Slack v. McDaniel*, 529 U.S. 473, 484 (2000).



UNITED STATES DISTRICT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**