

CLD-042

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 23-2456

BENJAMIN F. WHITEMAN, Appellant

VS.

ATTORNEY GENERAL DELAWARE, et al.

(D. Del. Civ. No. 1-23-cv-00405)

Present: KRAUSE, FREEMAN, and SCIRICA, Circuit Judges

Submitted are:

- (1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1);
- (2) By the Clerk for possible summary action under 3rd Cir. LAR 27.4 and I.O.P. Chapter 10.6

in the above-captioned case.

Respectfully,

Clerk

ORDER

The request for a certificate of appealability is denied. See 28 U.S.C. § 2253; Slack v. McDaniel, 529 U.S. 473, 484 (2000). Jurists of reason would not debate that the District Court lacked jurisdiction under 28 U.S.C. § 2254 because, at the time that Appellant filed his habeas petition, he was not “in custody” for the 1987 burglary conviction that he challenged. See Maleng v. Cook, 490 U.S. 488, 490-91 (1989); see also Lackawanna County District Attorney v. Coss, 532 U.S. 394, 401-03 (2001). Jurists of reason also would not debate the District Court’s conclusion that Appellant’s challenge to the Delaware Supreme Court’s denial of in forma pauperis status in post-conviction proceedings failed to assert a cognizable habeas claim. Lambert v. Blackwell, 387 F.3d 210, 247 (3d Cir. 2004) (“alleged errors in [state] collateral proceedings ... are not a

proper basis for habeas relief”). Finally, we summarily affirm the District Court’s conclusion that it lacked jurisdiction to the extent that Appellant sought a petition for a writ of error coram nobis to vacate his state court convictions. See Obado v. New Jersey, 328 F.3d 716, 718 (3d Cir. 2003) (per curiam).

By the Court,

s/ Cheryl Ann Krause
Circuit Judge



Dated: December 18, 2023
CLW/cc: Mr. Benjamin F. Whiteman
Brian L. Arban, Esq.

A True Copy:

Patricia S. 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

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December 18, 2023

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RE: Benjamin Whiteman v. Attorney General Delaware, et al
Case Number: 23-2456
District Court Case Number: 1-23-cv-00405

ENTRY OF JUDGMENT

Today, **December 18, 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. Dodszeit, Clerk

By: s/Carmella
Case Manager
267-299-4928

cc: Randall C. Lohan, Esq.