

APPENDICES

September 14, 2017

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **17-2911**

In re: ALPHONSO SANDERS, Petitioner

Present: MCKEE, JORDAN and RESTREPO, Circuit Judges

Submitted is Petitioner's application under 28 U.S.C. § 2244 to file a second or successive petition under 28 U.S.C. § 2254, in the above-captioned case.

Respectfully,

Clerk

MMW/BWM/clw

ORDER

We deny the application pursuant to 28 U.S.C. § 2244 for leave to file a second or successive 28 U.S.C. § 2254 petition. Petitioner has not satisfied the requirements for obtaining authorization to file a second or successive petition because he has not shown that he relies on either "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable," 28 U.S.C. § 2244(b)(2)(A), or newly discovered evidence that, "if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found [him] guilty of the underlying offense," § 2244(b)(2)(B). Petitioner cites recently discovered evidence that undermines the testimony at his trial concerning the victim's hair samples. The available record shows, however, that the other evidence against petitioner was significant and that the hair samples played a relatively minor role in the Commonwealth's case. Petitioner has therefore not set out a prima facie case that he could establish by clear and convincing evidence that no reasonable factfinder would have convicted him, even when considering the new evidence that he has produced.

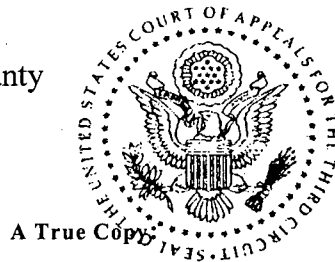
By the Court,

s/ L. Felipe Restrepo
Circuit Judge

Dated: September 28, 2017

sb/cc: Alphonso Sanders

District Attorney Lancaster County



Marcia M. Waldron

Marcia M. Waldron, Clerk