

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 17-3241

MARVIN PRICE, Appellant

VS.

SUPERINTENDENT FOREST SCI; ET AL.

(E.D. Pa. Civ. No. 2-15-cv-05352)

SUR PETITION FOR REHEARING

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

The petition for rehearing filed by appellant in the above-entitled 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/ Kent A. Jordan
Circuit Judge

DATED: February 5, 2018

CJG/cc: Jennifer O. Andress, Esq.
Marvin Price

DLD-082

December 21, 2017

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(E.D. Pa. Civ. No. 2-15-cv-05352)

Present: JORDAN, SHWARTZ and KRAUSE, Circuit Judges

Submitted are:

- (1) By the Clerk for possible dismissal due to a jurisdictional defect; and
- (2) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1)

in the above-captioned case.

Respectfully,

Clerk

MMW/EGL/cjg

ORDER

Appellant's request for a certificate of appealability ("COA") is denied because jurists of reason would not debate the District Court's denial of his claims. See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000). We make that determination primarily for the reasons thoroughly explained by the Magistrate Judge. We deny appellant's request for a COA without addressing the timeliness of this appeal because the issuance of a COA is a jurisdictional prerequisite to reaching the merits. See Gonzalez v. Thaler, 565 U.S. 143, 142 (2012).

We note that appellant has raised numerous substantive claims for the first time in his COA application. We generally do not entertain claims asserted for the first time on

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BY THE COURT

s/ Kent A. Jordan
Circuit Judge

DATED: February 5, 2018

CJG/cc: Jennifer O. Andress, Esq.
Marvin Price

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARVIN PRICE,

Petitioner,

v.

MICHAEL OVERMAYER, et al.

Respondents.

CIVIL ACTION

NO. 15-5352

ENTERED

OCT 25 2017

CLERK OF COURT

ORDER

AND NOW, this 25th day of October, 2017, upon consideration of Petitioner's motion to proceed on appeal *in forma pauperis* on appeal (Doc No. 23), it is **ORDERED** that:

1. Plaintiff's motion to proceed on appeal *in forma pauperis* is **DENIED WITHOUT PREJUDICE** because he has failed to submit a certified copy of his prisoner account statement for the six-month period prior to the filing of this civil action, as required by 28 U.S.C. § 1915(a).
2. Within thirty (30) days of the date of this order, Plaintiff shall either (1) remit the \$505 filing fee to the Clerk of Court for the District Court, or (2) file a certified copy of his prisoner account statement showing all deposits, withdrawals, and a current balance, from any correctional facility from which he was confined from April 5, 2017 through October 5, 2017. If Plaintiff is ultimately granted leave to proceed *in forma pauperis*, he will be obligated to pay the \$505 filing fee in installments pursuant to 28 U.S.C. § 1915(b), even if his case is dismissed. He will not be entitled to the return of any payments made toward the fee.
3. If Plaintiff fails to comply with this order, his case may be dismissed without prejudice for failure to prosecute without further notice.

BY THE COURT


MITCHELL S. GOLDBERG, J.