

ALD-126

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-3308 and 25-1486

UNITED STATES OF AMERICA

v.

JULIO AVILES, SR.,
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Criminal Action No. 1:15-cr-00181-001)
District Judge: Honorable Malachy E. Mannion

Submitted by the Clerk for Possible Dismissal Due to Untimely Filing or for Summary
Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6

April 17, 2025

Before: BIBAS, PORTER, and MONTGOMERY-REEVES, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted for possible dismissal due to untimely filing or for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on April 17, 2025. On consideration whereof, it is now hereby

Appendix 1

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered November 1, 2024 and February 19, 2025, respectively, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: May 8, 2025

ALD-126

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 24-3308 & 25-1486 (consolidated)

UNITED STATES OF AMERICA

v.

JULIO AVILES, SR.,
Appellant

On Appeal from the United States District Court
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April 17, 2025

Before: BIBAS, PORTER, and MONTGOMERY-REEVES, Circuit Judges

(Opinion filed May 8, 2025)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Julio Aviles, Sr., appeals the District Court's denial of his second motion for compassionate release filed pursuant to 18 U.S.C. § 3582. We will summarily affirm.

Aviles currently is serving a thirty-five-year sentence after a jury convicted him of numerous drug-trafficking and firearms offenses in the Middle District of Pennsylvania in 2017. He unsuccessfully challenged his conviction and sentence on direct appeal, see United States v. Aviles, 854 F. App'x 445, 446 (3d Cir. 2021) (nonprecedential), and under 28 U.S.C. § 2255, see United States v. Aviles, C.A. No. 22-1851. We subsequently affirmed the denial of his first compassionate release motion in 2022. See United States v. Aviles, C.A. No. 22-2319. Since that time, we have affirmed the denial of his motion for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2241, see Aviles v. United States, C.A. No. 23-3224, and we denied his application to file a second or successive Section 2255 motion, see In re: Julio Aviles, Sr., C.A. No. 23-2524.

Aviles filed the underlying motion for compassionate release in September 2024. The District Court denied his motion on the grounds that his proffered reasons for relief—alleged violations of his constitutional rights—were not appropriate considerations under Section 3582, and because his extensive criminal history and likelihood of recidivism rendered him a danger to the community in any event. To the extent Aviles intended to pursue constitutional challenges to his conviction or sentence,

the District Court explained that he had not satisfied the statutory prerequisites to filing a second or successive Section 2255 motion.

Avilés appealed. He also moved for reconsideration in the District Court, invoking for the first time certain ongoing health issues and specifically requesting that his sentence be reduced to 15 years, the mandatory minimum term that would have applied but for his status as a career offender. The District Court restated its findings as to his dangerousness and denied his request. Aviles appealed that order as well.¹ He then submitted to this Court virtually identical documents styled as "Petition[s] for Reconsideration of Reduction of Sentence Pursuant to 18U-S-C 3582(C)(1)(A), (C)(2), Based on Amendment 821," which briefly reiterate the ailments he listed in his reconsideration motion but primarily consist of arguments he previously raised in the District Court about purported irregularities at sentencing.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We review a District Court's order denying a motion for compassionate release for abuse of discretion and will not

¹ Both appeals are facially untimely. See Fed. R. App. P. 4(b). However, the time limit for appeals falling under Rule 4(b) is not jurisdictional, and we need not address the timeliness of such an appeal unless the government raises the issue, which it has not done here. See Gov't of the V.I. v. Martinez, 620 F.3d 321, 328 (3d Cir. 2010). Even if the government had, it appears that Aviles would be able to rescue his appeals under United States v. Grana, 864 F.2d 312, 313 (3d Cir. 1989) ("[I]n computing the timeliness of *pro se* prisoners' appeals, any prison delay in transmitting to the prisoner notice of the district court's final order or judgment shall be excluded from the computation of an appellant's time for taking an appeal."). As a result, we do not dismiss the appeals as untimely.

disturb that decision unless the District Court “committed a clear error of judgment.” United States v. Pawlowski, 967 F.3d 327, 330 (3d Cir. 2020) (citation omitted). We may summarily affirm a District Court’s decision if the appeal fails to present a substantial question. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

A District Court may reduce a sentence pursuant to 18 U.S.C. § 3582(c)(1)(A) if, *inter alia*, “extraordinary and compelling reasons warrant such a reduction.” We agree with the District Court that Aviles’ motion relied exclusively upon legal challenges to his conviction and sentence that are not appropriate for consideration under Section 3582. Such claims must be presented under 28 U.S.C. § 2255 and are subject to that statute’s limitations on successive filings, which Aviles has not satisfied here. We also find no error in the District Court’s conclusion that a sentencing reduction is unwarranted under the circumstances given Aviles’ extensive criminal history and the risks he presents to the community. See 18 U.S.C. § 3553(a). As the District Court clearly did not abuse its discretion in denying Aviles’ motion for compassionate release or motion for reconsideration, these appeals do not present a substantial question. Accordingly, we deny Aviles’ “petitions for reconsideration” and will summarily affirm the District Court’s judgment. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-1486

UNITED STATES OF AMERICA

v.

JULIO AVILES, SR.,
Appellant

(D.C. Civil No. 1:15-cr-00181-001)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO,
BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES and
CHUNG, 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 the Court en banc, is denied.

BY THE COURT,

s/ David J. Porter

Circuit Judge

Date: June 30, 2025
Lmr/cc: Julio Aviles, Sr.
All Counsel of Record

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-1486

UNITED STATES OF AMERICA

v.

JULIO AVILES, SR.,
Appellant

(D.C. Civil No. 1:15-cr-00181-001)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO,
BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES and
CHUNG, 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 the Court en banc, is denied.

BY THE COURT,

s/ David J. Porter
Circuit Judge

Date: June 30, 2025
Lmr/cc: Julio Aviles, Sr.
All Counsel of Record

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 24-3308

UNITED STATES OF AMERICA

v.

JULIO AVILES, SR.,
Appellant

(M.D. Pa. No. 1:15-cr-00181-001)

Present: PORTER, Circuit Judge

1. Motion filed by Appellant Julio Aviles, Sr. to File Exhibits to Petition for Rehearing, to File Petition for Rehearing Out of Time.

Respectfully,
Clerk/lmr

ORDER

The foregoing Motion is **GRANTED**.

By the Court,

s/David J. Porter
Circuit Judge

Dated: July 9, 2025
Lmr/cc: Julio Aviles, Sr.
All Counsel of Record

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 24-3308

UNITED STATES OF AMERICA

v.

JULIO AVILES, SR.,
Appellant

(M.D. Pa. No. 1:15-cr-00181-001)

ORDER

Present: CHAGARES, Chief Judge, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES and CHUNG, 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/ David J. Porter
Circuit Judge

Date: July 22, 2025
Lmr/cc: Julio Aviles, Sr.
All Counsel of Record

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Constitutional Law § 840 - due process - known false evidence

1. Deliberate deception of a court and jurors in a criminal case by the presentation of known false evidence is incompatible with the rudimentary demands of justice.

Constitutional Law § 840 - due process - false evidence

2. A conviction secured by the use of false evidence must fall under the due process clause where the state, although not soliciting the false evidence, allows it to go uncorrected when it appears.

Constitutional Law § 840 - material evidence - suppression

3. Under the due process clause, the prosecution's suppression of material evidence justifies a new trial irrespective of the prosecution's good faith or bad faith.

Constitutional Law § 840 - evidence - nondisclosure

4. When the reliability of a given witness may well be determinative of guilt or innocence, the prosecution's nondisclosure of evidence affecting credibility justifies a new trial, under the due process clause, irrespective of the prosecution's good faith or bad faith.

Constitutional Law § 840 - due process - suppressed evidence

5. The due process clause does not automatically require a new trial whenever the combing of the prosecutor's files after the trial has disclosed evidence possibly useful to the defense but not likely to have changed the verdict; a finding of materiality of the evidence is required.

Constitutional Law § 840 - due process - false evidence

6. Under the due process clause, a new trial is required in a criminal case if false testimony introduced by the state, and allowed to go uncorrected when it appeared, could in any reasonable likelihood have affected the judgment of the jury.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Constitutional Law § 840 - due process - false evidence.

1. A conviction obtained through use of false evidence, known to be such by representatives of the state, must fall under the due process clause of the Fourteenth Amendment; the same result obtains when the state, although not soliciting false evidence, allows it to go uncorrected when it appears.

Annotation: p.1991, infra.

Constitutional Law § 840 - due process - false evidence.

2. The due process principle that a state may not knowingly use false testimony to obtain a tainted conviction does not cease to apply merely because the false testimony goes only to the credibility of the witness.

Annotation: p.1991, infra.

Constitutional Law § 840 - due process - false evidence.

3. In applying the rule that a conviction <*pg. 1218> obtained through use of false evidence known to be such by representatives of the state and permitted by them to go uncorrected must fall under the due process clause of the Fourteenth Amendment, it is immaterial that the silence of the state representatives was not the result of guile or a desire to prejudice.

Annotation: p.1991, infra.

Constitutional Law § 840 - due process - false evidence.

4. Where a representative of the state in a criminal trial solicits false testimony or permits it to go uncorrected, the fact that the jury was apprised of other grounds for believing that the witness may have had an interest in testifying against the defendant does not turn what is otherwise a tainted trial into a fair one.

Annotation: p.1991, infra.

Appeal and Error § 806 - from state court - effect of false testimony.

5. In determining whether a state conviction obtained through use of false testimony violates the due process clause, the United States Supreme Court is not bound by a determination by the

state court below that the false testimony could not in any reasonable likelihood have affected the judgment of the jury.

Appeal and Error § 708 - to Supreme Court - constitutional questions.

6. It is the duty of the United States Supreme Court to make its own independent examination of the record when federal constitutional deprivations are alleged, the duty resting on the court's responsibility for maintaining the Constitution inviolate.

Appeal and Error § 745 - denial of right under Federal Constitution - scope and extent of review.

7. In cases in which there is a claim of denial of rights under the Federal Constitution, the Supreme Court of the United States is not bound by the conclusions of lower courts, but will reexamine the evidentiary basis on which those conclusions are founded.

Constitutional Law § 840 - due process - false evidence.

8. The due process clause of the Fourteenth Amendment is violated by a state conviction of murder where the principal state witness testified in response to a question by an attorney for the state that he had received no promise of consideration in return for his testimony, whereas, in fact, the attorney had promised him consideration and did nothing to correct the witness' false testimony; this is so even though the jury was apprised that a public defender had promised to do what he could for the witness.

Annotation: p.1991, *infra*.

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