APPENDIX "A"

5-16-2023 Report and Recommendation

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

CHARLES S. RENCHENSKI,	:	
Petitioner	:	
v.	:	Case No. 3:23-cv-38-KRG-KAP
SUPERINTENDENT McGINLEY, S.C.I.	:	
COAL TOWNSHIP,	:	
Respondent	:	

Report and Recommendation

Recommendation

I recommend that petitioner's second or successive habeas petition challenging his continued imprisonment as a result of his life sentence in Commonwealth v. Renchenski, CP-17-CR-481-1982 (C.P. Clearfield) be dismissed because it is unauthorized by the Court of Appeals. No certificate of appealability should be issued.

Report

The Court previously had petitioner's habeas petition before it in Renchenski v. Varano, Case No. 3:10-cv-217-KRG-KAP (W.D.Pa. April 30, 2015), *certificate of appealability denied sub nom.* Renchenski v. Superintendent Coal Township SCI, No. 15-2252 (3d Cir. December 4, 2015), *cert. denied sub nom.* Renchenski v. Mooney, 137 S.Ct. 338 (No. 16-5632, October 17, 2016). Before turning to the current petition I address the procedural history of this matter, since this matter went to the Court of Appeals and has been remanded. There are differing ways second and successive habeas petitions can be and have been handled. Due to 28 U.S.C.§ 2244(b)(3)(A), a habeas petitioner cannot proceed with a second or successive habeas petition in the District Court without prior authorization from the Court of Appeals. As a magistrate judge, I do not have the power to enter judgment in a case without the consent of all parties. Therefore, when a second or successive petition is preliminarily assigned to me I can order the matter served on the respondent and once service is accomplished, I can decide the matter if all parties consent to my jurisdiction. If not all parties consent to my jurisdiction I can write a Report and Recommendation recommending dismissal of the matter as unauthorized or recommending transfer of the matter to the Court of Appeals. In the alternative, I can transfer the matter directly to the Court of Appeals, because the latter procedure does not constitute entering a judgment without consent. I used that procedure without objection recently in Allen v. Court of Common Pleas, 3:21-cv-103-KAP (W.D.Pa. June 15, 2021), *dismissed for lack of prosecution sub nom.* In re: Thomas Ray Allen, No. 21-2146 (3d Cir. September 8, 2021). When this matter came to me I used the unobjected-to procedure in

Allen as a model (in fact I cited to it) and transferred the second or successive petition to the Court of Appeals to get the matter to that court as quickly as possible.

The Court of Appeals has in the last eighteen months been reviewing in published and unpublished decisions the extent to which the Magistrate Judges Act permits a magistrate judge to act independently and the extent to which the Report and Recommendation process must be used. On April 18, 2023, a panel of the Court of Appeals, at In Re: Charles S. Renchenski, No. 23-1461 (3d Cir. April 18, 2023), ordered the Clerk of the Court of Appeals to transfer this matter back to this Court, directing the use of the Report and Recommendation procedure used in 2015 by Magistrate Judge Mitchell and Judge Conti in Jerry-El v. Luther, Case No. 2:82-cv-2357 (W.D.Pa), *subsequent proceedings at* In re: Jerry-El, No. 15-2898 (3d Cir. December 22, 2015)(unpublished). Henceforth I will do that. The Clerk has already assigned this matter to a district judge. For reference, a copy of the Court of Appeals' order at In Re: Charles S. Renchenski, No. 23-1461 (3d Cir. April 18, 2023) was docketed yesterday at ECF no. 12.

As I said in my vacated transfer order, ECF no. 9, petitioner asserts that his habeas petition is not a second or successive one. But it is. The petition challenges petitioner's continued imprisonment as a result of his life sentence in Commonwealth v. Renchenski, CP-17-CR-481-1982 (C.P. Clearfield), which he previously challenged in a habeas corpus petition decided on the merits. *See* Renchenski v. Varano, Case No. 3:10-cv-217-KRG-KAP (W.D.Pa. April 30, 2015), *certificate of appealability denied sub nom.* Renchenski v. Superintendent Coal Township SCI, No. 15-2252 (3d Cir. December 4, 2015), *cert. denied sub nom.* Renchenski v. Mooney, 137 S.Ct. 338 (No. 16-5632, October 17, 2016). *See also* Renchenski v. Varano, Case No. 3:10-cv-217-KRG-KAP (W.D.Pa. September 29, 2017)(denying Rule 60(b) motion to vacate), *certificate of appealability denied sub nom.* Renchenski v. Superintendent Coal Township SCI, No. 17-3259 (3d Cir. January 23, 2018), *cert. denied sub nom.* Renchenski v McGinley, 139 S.Ct. 417 (No. 18-5672, October 29, 2018).

The petition asserts the same facts and legal claims previously. As the Court of Appeals, having reviewed petitioner's filings, observed in In Re: Charles S. Renchenski, No. 23-1461, *supra*, at 2:

> Petitioner has taken the position both in his petition and in his filings with this Court that his petition is not "second or successive" and that he thus does not require this Court's authorization to proceed with it. Petitioner has not argued that his present claims rely on new law or new facts as described in § 2244(b)(2), and they do not. Petitioner's present petition thus would not qualify for authorization under § 2244. For that reason, if the District Court concludes on review of petitioner's objections that his present petition is indeed second or successive, then it might be more appropriate to dismiss his petition rather than transfer it to this

Court again. If the District Court were to dismiss the petition, then the petitioner could appeal and seek a certificate of appealability under 28 U.S.C. § 2253.

Petitioner's Petition, styled as "Memorandum of Law in Support of Application for Writ of Habeas Corpus" (Memo), was docketed at ECF no. 2 (pages i through 45) and ECF no. 2-1 (pages 46 through 103). Petitioner's 26 supporting exhibits are at ECF no. 3 through 3-25. Petitioner expressly asserts the same claims that he presented in the previous habeas corpus petition. Memorandum at 62-102, *see* ECF no. 2 at 80-120, and attacks them as incorrectly decided. Memorandum at 55-61, *see* ECF no. 2 at 73-79.

Without new facts, law, or claims, the only way the current petition cannot be a second or successive petition is if it attacks a different judgment than the one pursuant to which petitioner has been serving a life sentence for decades. Petitioner accordingly advances a convoluted argument that he is indeed attacking a new judgment, namely the Pennsylvania Supreme Court's denial of review to a successive collateral attack in which petitioner sought to avoid the limitations of Pennsylvania's Post Conviction Relief Act, 42 Pa.C.S. §§ 9541-9546, by styling his attack as a state habeas corpus action. Memo at 1, *see* ECF no. 2 at 19.

Petitioner gives the chronology in his cover letter, ECF no. 1. Petitioner began a collateral attack on his sentence in 2019 that resulted in an opinion at Commonwealth v. Renchenski, 237 A.3d 1097 (table), *text at* 2020 WL 3547968 (Pa.Super. June 20, 2020), affirming the Court of Common Pleas denial of what the Superior Court called petitioner's second PCRA petition. The petitioner argued unsuccessfully that the trial court erred in treating his state petition for writ of habeas corpus as an untimely PCRA petition. The Pennsylvania Supreme Court denied review without comment at Commonwealth v. Renchenski, 244 A.3d 6 (table) (Pa. January 11, 2021).

Petitioner continues in his cover letter, ECF no. 1, that he filed his next collateral attack, a two-page "Application for Writ of Habeas Corpus," Exhibit 5 *at* ECF no. 3-4, in the trial court in March 2021. It was dismissed in an eight-page Opinion and Order by the Court of Common Pleas in June 2021. Exhibit 6 *see* ECF no. 3-5. Petitioner writes, Memorandum at 14, *see* ECF no. 2 at 32, that "rather than wasting more [time] appealing to the Superior Court," he then filed an Application for Relief in the Pennsylvania Supreme Court in September 2021. The Application for Relief was originally given a docket number of 69 WT 2020 and ultimately given a docket number of 71 WM 2021. Petitioner says the Application for Relief was denied by the Pennsylvania Supreme Court without opinion in March 2022. Exhibit 8, *see* ECF no. 3-7 (also denying a "Motion for Court Order of Immediate Release"), and reconsideration was denied in April 2022. Petitioner cites as support what he calls Exhibit 9, *see* ECF no. 3-8, but that is a page of the lower court docket. The Application for Relief itself is not part of the record nor does petitioner claim in his Memorandum that it is part of the record, but it is not necessary to

review it to decide that this matter is second or successive.

Petitioner argues, Memorandum at 15-16, *see* ECF no. 2 at 33-34, that his presentation of an Application for Relief and the Pennsylvania Supreme Court's denial of it without comment constitutes fair presentation, adjudication on the merits, and therefore exhaustion of every claim in the current petition for habeas corpus (which as the Court of Appeals recognized, are the claims presented in the original petition for habeas corpus).

Petitioner's argument distilled to its essence is that the same claims already presented to this court can be presented again because the Pennsylvania Supreme Court either considered them and created a new judgment, or by refusing to consider them as petitioner characterizes them committed a violation of his First Amendment right to petition for redress of grievances. Memorandum at 4-54, *see* ECF no. 2 at 22-72.

Petitioner's assertion that the Pennsylvania Supreme Court was legally required to consider and did consider his Application for Relief as a habeas corpus petition is unsupported. Considering this very procedural context, the Supreme Court ruled decades ago that presenting a claim to the state courts in a fashion in which its merits will not ordinarily be considered does not constitute "fair presentation" of that claim. Castille v. Peoples, 489 U.S. 346, 351 (1989)(citing Pa.Rule App.Proc. 1114).

But more fundamentally, the rejection of petitioner's efforts by the state courts is not a new judgment pursuant to which a new habeas can be directed. Petitioner is and has throughout been in custody pursuant to the sentence imposed in Commonwealth v. Renchenski, CP-17-CR-481-1982 (C.P.Clearfield). Petitioner is not in custody pursuant to the Pennsylvania Supreme Court's denial of his latest collateral attack. To realize this all one has to do is consider whether petitioner would be in custody if petitioner had never filed anything in 2021 or 2022. Of course he would.

Under Gonzalez v. Crosby, 545 U.S. 524, 532-33 (2005), petitioner's unsuccessful Rule 60(b) motion in 2017 was a second or successive habeas petition because it attacked the Court's previous resolution of petitioner's claims on the merits. Petitioner's current attack on the previous resolution of petitioner's claims on the merits is claimed to be directed at the latest rejection of a state court collateral attack solely to avoid AEDPA's limitations on second or successive petitions. Accepting petitioner's characterization would mean that no state court judgment could ever be final, no federal petition could ever be untimely, and no federal petition could ever be an abuse of the writ, or even second or successive, so long as a petitioner filed any kind of collateral attack in state court between two federal petitions.

In Banister v. Davis, 140 S. Ct. 1698, 1705–06 (2020), in the course of holding that

a Rule 59 motion promptly filed to alter a judgment in a habeas matter was not a second or successive petition, the Supreme Court explained that "second or successive" must be defined in light of AEDPA's purposes of conserving judicial resources, reducing piecemeal litigation, and lending finality to state court judgments within a reasonable time. If in pre-AEDPA cases a filing would have constituted an abuse of the writ, "it is successive; if not, likely not." Under Banister v. Davis, the current petition cannot be anything other than a second or successive petition for a writ of habeas corpus. It can be transferred to the Court of Appeals for consideration under 28 U.S.C.§ 2244, or it can be dismissed for lack of jurisdiction with the option to petitioner to seek a certificate of appealability. The Court of Appeals has already made its preference clear. The matter should be dismissed for lack of jurisdiction.

A certificate of appealability should issue whenever a habeas petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A substantial showing is not synonymous with success: a petitioner need only show that jurists of reason would debate the correctness of the district court's denial of a habeas petition. *See* Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Hickox v. Superintendent Benner Twp. SCI, 2020 WL 6437411, at *1 (3d Cir. Oct. 29, 2020). At the same time, it is more than good faith or the absence of frivolity on the part of the petitioner. Miller-El v. Cockrell, 537 U.S. at 338. Petitioner is not entitled to a certificate of appealability because he does not by repetition make a substantial showing of the denial of a constitutional right.

Pursuant to 28 U.S.C.§ 636(b)(1), the parties can within fourteen days file written objections. In the absence of timely and specific objections, any appeal would be severely hampered or entirely defaulted. See EEOC v. City of Long Branch, 866 F.3d 93, 100 (3d Cir. 2017) (describing standard of appellate review when no timely and specific objections are filed as limited to review for plain error).

DATE: May 16, 2023

Keith A. Pesto,
United States Magistrate Judge

Notice by ECF to counsel of record, and by U.S. Mail to:

Charles S. Renchenski AP-8124
S.C.I. Coal Township
1 Kelley Drive
Coal Township, PA 17866

APPENDIX "B"

1-17-2025 District Court Memorandum order

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

CHARLES S. RENCHENSKI,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 3:23-38
	)	Judge Nora Barry Fischer
SUPERINTENDENT MCGINLEY,	)	Magistrate Judge Keith Pesto
ATTORNEY GENERAL'S OFFICE	)	
	)	
Respondents.	)	

MEMORANDUM ORDER

AND NOW, this 17th day of January, 2025, upon consideration of the Report and Recommendation filed by United States Magistrate Judge Keith A. Pesto on May 16, 2023, (Docket No. 13), recommending that Petitioner Charles S. Renchenski's Petition (Docket No. 1) be dismissed as it is "a second or successive habeas petition challenging his continued imprisonment as a result of his life sentence in in Commonwealth v. Renchenski, CP-17-CR-481-1982 (C.P. Clearfield)" and was not authorized by the U.S. Court of Appeals for the Third Circuit, and that no certificate of appealability should issue, and directing that objections be filed within 14 days, Petitioner's Objections which were timely filed on June 2, 2023, (Docket No. 15), and upon independent review of the record and de novo consideration of the Magistrate Judge's Report and Recommendation of May 16, 2023, (Docket No. 13),

IT IS HEREBY ORDERED that the Report and Recommendation [13] is ADOPTED as the Opinion of this Court;

IT IS FURTHER ORDERED that Petitioner's Objections [15] are OVERRULED, as the Court finds that Petitioner's challenge to "the legality of his continued confinement" (Docket No.

2 at 19), is in fact challenging the conviction and sentence he is now serving and he previously filed a § 2254 petition at Civ. A. No. 3:10-217-KRG-KAP, such that the present action constitutes a second or successive habeas petition. Hence, this Petition must be dismissed because this Court lacks jurisdiction given that Petitioner has not received authorization from the U.S. Court of Appeals for the Third Circuit to bring this action, *see* 28 U.S.C. § 2244(b); *see also Robinson v. Johnson*, 313 F.3d 128, 139-40 (3d Cir. 2002);

IT IS FURTHER ORDERED that the Petition (Docket No. 1) is DISMISSED for lack of jurisdiction;

IT IS FURTHER ORDERED that no certificate of appealability shall issue because Petitioner has not made a substantial showing of the denial of a Constitutional right or shown that jurists of reason would disagree that this is a second or successive habeas petition, *see e.g., Slack v. McDaniel*, 529 U.S. 473 (2000);

IT IS FURTHER ORDERED that to the extent that Petitioner seeks to challenge Magistrate Judge Pesto's separate order denying his motion for recusal, (Docket No. 14), the same is denied for the reasons set forth by Judge Pesto, (Docket No. 11); and,

IT IS FURTHER ORDERED that the Clerk of Court shall mark this case CLOSED.

s/Nora Barry Fischer
Nora Barry Fischer
Senior U.S. District Judge

cc/ecf: Magistrate Judge Keith A. Pesto
All counsel of record.

cc: Charles S. Renchenski AP-8124
S.C.I. Coal Township
1 Kelley Drive
Coal Township, PA 17866
(via first class mail)

APPENDIX "C"

8/26/25 Third Circuit Appeal Denial

CLD-191

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **25-1792**

CHARLES S. RENCHENSKI, Appellant

VS.

SUPERINTENDENT COAL TOWNSHIP SCI; ET AL.

(W.D. Pa. Civ. No. 3:23-cv-00038)

Present: KRAUSE, PHIPPS, and SCIRICA, Circuit Judges

Submitted are:

(1) Appellant's notices of appeal, which may be construed as requests for a certificate of appealability under 28 U.S.C. § 2253(c)(1);

(2) Appellant's brief in support of appeal; and

(3) Appellant's supplemental brief in support of appeal

in the above-captioned case.

Respectfully,

Clerk

ORDER

Appellant's request for a certificate of appealability is denied. See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Appellant seeks release from his custody, which was imposed by a 1985 judgment of the Pennsylvania Court of Common Pleas for Clearfield County. Appellant must invalidate that judgment in order to obtain release. See 28 U.S.C. § 2254(a); Magwood v. Patterson, 561 U.S. 320, 332-33 (2010). But appellant previously challenged that judgment in the habeas petition he filed in W.D. Pa. Civ. No. 3:10-cv-00217. Thus, to

the extent that appellant's present habeas petition can be construed to challenge that judgment again, it is a second or successive habeas petition, see Magwood, 561 U.S. at 332-33, and it does not qualify for authorization under 28 U.S.C. § 2244 as we previously determined in C.A. No. 23-1461. Appellant argues that he is not challenging his 1985 criminal judgment but is instead challenging 2022 judgments of the Pennsylvania Supreme Court in his collateral post-conviction proceeding. But a challenge to those judgments does not state grounds for the habeas relief that appellant seeks because "alleged errors in collateral proceedings . . . are not a proper basis for habeas relief from the original conviction." Lambert v. Blackwell, 387 F.3d 210, 247 (3d Cir. 2004).

Because jurists of reason would not debate these points, appellant's request for a certificate of appealability is denied. We also deny all other relief that appellant's filings can be construed to request.

By the Court,

s/Anthony J. Scirica
Circuit Judge

Dated: August 26, 2025
Tmm/cc: Charles S. Renchenski
Susan E. Affronti, Esq.
Ronald Eisenberg, Esq.

A True Copy:

Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate