

APPENDIX

A-1

DECISION OF THE UNITED STATES COURT OF APPEALS

CLD-092

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 26-1139

IN RE: GARY DOYEN, Petitioner

Present: BIBAS, PHIPPS, and NYGAARD, *Circuit Judges*

Submitted petitioner's document titled "independent action presenting a claim of fraud upon the court pursuant to *Hazel-Atlas Glass Co. v. Hartford Empire Co.* in the United States District Court for the Eastern District of Pennsylvania," which was docketed in the United States District Court for the Eastern District of Pennsylvania at 2:25-cv-06920 and was transferred by the district court to be treated as an 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

ORDER

Petitioner's application under 28 U.S.C. § 2244 is denied. Petitioner seeks authorization to proceed with an action that he has styled as one under *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944). But the action is in substance a habeas petition because it does not claim fraud on a *federal* court and instead claims that fraud on petitioner's *state trial court* is a reason to invalidate his criminal judgment and order his release from custody. *See Magwood v. Patterson*, 561 U.S. 320, 332 (2010); *Gonzalez v. Crosby*, 545 U.S. 524, 531-32 (2005). And the action constitutes a second or successive habeas petition that requires this Court's authorization because petitioner previously challenged the same criminal judgment in his habeas petition at E.D. Pa. No. 2:06-cv-02264. *See Magwood*, 561 U.S. at 330-33.

Such authorization is denied because petitioner has not made a *prima facie* showing that his proposed action satisfies the requirement of 28 U.S.C. § 2244(b). Petitioner claims that certain correspondence shows that certain warrants were invalid, but petitioner has not *prima facie* shown that he could not previously have discovered that alleged circumstance or that it constitutes clear and convincing evidence that no reasonable factfinder could have found him guilty. *See* 28 U.S.C. § 2244(b)(2)(B).

We note that petitioner's § 2244 memorandum also requests appellate review of the District Court's decision to transfer petitioner's action to this Court for consideration of authorization under § 2244. We decline to construe the memorandum as a notice of appeal because we would lack jurisdiction over the transfer order under 28 U.S.C. § 1291, *see Murphy v. Reid*, 332 F.3d 82, 83-85 (2d Cir. 2003) (per curiam), and because the only issue in a potential appeal—whether petitioner's purported *Hazel-Atlas* action constitutes a successive habeas petition that requires this Court's authorization—already is before the Court and has been decided in this § 2244 proceeding, *see Murphy*, 332 F.3d at 84; *see also In re Edwards*, 98 F.4th 425, 429 (3d Cir. 2024) (reviewing the antecedent issue of successiveness in adjudicating an application under 28 U.S.C. §§ 2244 and 2255(h)).

By the Court,

s/ Peter J. Phipps

Circuit Judge

Dated: March 16, 2026

Lmr/cc: Gary Doyen

All Counsel of Record



A True Copy:

Patricia S. Dodszeit

Patricia S. Dodszeit, Clerk

APPENDIX

B-1

ORDER OF THE UNITED STATES DISTRICT COURT

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

GARY DOYEN,
Petitioner,

v.

THOMAS MCGINLEY, *et al.*,
Respondents.

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:
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:
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CIVIL ACTION NO. 25-CV-6920

ORDER

AND NOW this 21st day of January, 2026, it appearing that Gary Doyen has filed a successive petition for habeas corpus relief,¹ and it further appearing that Doyen has not obtained prior approval from the Court of Appeals, as is required by statute (28 U.S.C. § 2244(b)(3)(A)),² it is **ORDERED** that, pursuant to 28 U.S.C. § 1631, the instant petition is **TRANSFERRED** to the United States Court of Appeals for the Third Circuit to determine whether the district court may consider the successive petition.

The Clerk of Court is **DIRECTED** to close this case.

BY THE COURT:

/s/ Gerald Austin McHugh

GERALD A. MCHUGH, J.

¹ Doyen filed his petition pursuant to *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), asserting “fraud upon the court and fabrication of evidence” in connection with his conviction in *Commonwealth v. Doyen*, CP-15-CR-0004695-2000 (Chester C.P.). See ECF No. 1 at 2, 4. However, a federal court does not have the inherent power “to overturn a state criminal conviction obtained by fraud, outside of power authorized by statute; *i.e.* through a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254.” *Wells v. King*, 340 F. App’x 57, 58 (3d Cir. 2009) (*per curiam*). As such, Doyen’s *Hazel-Atlas* claims may only be addressed by filing a petition for habeas corpus relief.

Doyen filed a prior petition for habeas corpus relief in Civil Action No. 06-2264, challenging the same Chester County conviction. The Court denied that petition on July 15, 2008. See *Doyen v. Rozum*, No. 06-2264, at ECF No. 23. The United States Court of Appeals for the Third Circuit denied Doyen’s application for a certificate of appealability on January 21, 2009. See *Doyen v. Rozum*, No. 08-3372 (3d Cir.).

² “Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A).

APPENDIX

C-1

*ORDER OF THE UNITED STATES COURT OF APPEALS DENYING
REHEARING*

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 26-1139

IN RE: GARY DOYEN, Petitioner

(E.D. Pa. No. 2:25-cv-06920)

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, BOVE, MASCOTT, and NYGAARD,* *Circuit Judges*.

The petition for rehearing filed by petitioner 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/ Peter J. Phipps
Circuit Judge

Date: April 29, 2026
Tmm/cc: Gary Doyen
District Attorney Chester County

* Judge Nygaard's vote is limited to panel rehearing.

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