

NOT RECOMMENDED FOR PUBLICATION

File Name: 12a1118n.06

No. 10-1262

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

HASSAN RIZK,)	
)	
Petitioner-Appellant,)	ON APPEAL FROM THE UNITED
)	STATES DISTRICT COURT FOR
v.)	THE EASTERN DISTRICT OF
)	MICHIGAN
)	
JOHN PRELESNIK,)	
)	
Respondent-Appellee.)	OPINION
)	
)	

Before: DAUGHTREY, KETHLEDGE, and DONALD, Circuit Judges.

BERNICE BOUIE DONALD, Circuit Judge. Hassan Rizk filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging numerous constitutional violations arising from his conviction for the murder of Sharon Rouse. The district court denied his petition for lack of discernible constitutional error and also denied his motion for a certificate of appealability (COA). We issued a COA to review the district court’s decision regarding Rizk’s Fifth Amendment claim, which arose from his pre-arrest silence.

A review of the record, the parties’ briefs, and the applicable law reveals that a panel opinion further addressing the issue would serve no jurisprudential purpose. In granting the COA, we recognized that the admissibility of pre-arrest, pre-*Miranda* silence was an “unsettled” matter among the federal courts. This case, however, is an ill-suited vehicle for revisiting that question, in light

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of AEDPA's jurisdictional constraints. Accordingly, we **AFFIRM** for the reasons stated in the district court's opinion.