

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JERMAINE L. BRYANT,

Petitioner,

v.

PATRICK NOGAN, et al.,

Respondents.

Civil Action No. 18-2701 (JLL)

MEMORANDUM OPINION

IT APPEARING THAT:

1. On or about February 26, 2018, Petitioner, Jermaine L. Bryant, filed the instant petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. (ECF No. 1).

2. On March 14, 2018, this Court entered an Order and Memorandum Opinion dismissing that petition without prejudice for lack of jurisdiction, as it was a second or successive habeas petition brought without leave of the Court of Appeals. (ECF Nos. 4–5).

3. On March 28, 2018, Petitioner filed a motion for reconsideration. (ECF No. 6). This Court denied that motion on April 12, 2018. (ECF Nos. 7–8).

4. On April 3, 2018, Petitioner filed a notice of appeal. (ECF No. 10). Petitioner also sought leave to appeal *in forma pauperis*, (ECF No. 12), which this Court denied without prejudice on April 30, 2018, (ECF No. 13). This Court, however, gave Petitioner leave to refile his application for leave to appeal *in forma pauperis* within thirty days. (ECF No. 13).

5. Although Petitioner has yet to refile his application, on May 2, 2018, the Court received from Petitioner a copy of a letter he submitted to the Court of Appeals requesting a certificate of appealability. (ECF No. 14). Although that letter is initially addressed to the Third Circuit, there is a second copy of the letter addressed to this Court. It is thus not clear whether Petitioner was

simply providing this Court with a courtesy copy, or whether he is requesting a certificate of appealability from this Court.

6. To the extent that Petitioner's letter is a request for a certificate of appealability from this Court, that request is denied. Pursuant to 28 U.S.C. §2253(c), a petitioner may not appeal from a final order in a habeas proceeding where that petitioner's detention arises out of a state court proceeding unless he has "made a substantial showing of the denial of a constitutional right." "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). "Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." *Id.* As this Court explained in both its Opinion dismissing Petitioner's petition for lack of jurisdiction and its Opinion denying his motion for reconsideration, Petitioner's current filing is a second or successive habeas petition brought without leave of the Court of Appeals, and as such this Court is without jurisdiction to hear Petitioner's claims. Because the bar on second or successive petitions clearly applies for the reasons expressed in those two opinions, (ECF No. 4 at 2-3; ECF No. 7 at 3), and because jurists of reason could not dispute that this Court correctly

applied the second or successive petition bar in dismissing Petitioner's petition for lack of jurisdiction, Petitioner has failed to show that his petition should be allowed to proceed further. Petitioner is therefore denied a certificate of appealability.

7. In conclusion, Petitioner's letter, (ECF No. 14), is denied to the extent it is a request for a certificate of appealability addressed to this Court. An appropriate order follows.

Dated: *May 3rd, 2018*



JOSE L. LINARES,
Chief Judge, United States District Court