

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

GREG LEE,	:	Civil No. 1:15-cv-2195
	:	
Petitioner,	:	
	:	
v.	:	
	:	Judge Sylvia H. Rambo
J. LANE, et al.,	:	
	:	
Respondents.	:	Magistrate Judge Mehalchick

MEMORANDUM

Before the court is a report and recommendation of the magistrate judge in which she recommends that the amended habeas petition filed under the captioned number be transferred to the Third Circuit Court of Appeals pursuant to 28 U.S.C. § 1631 for their consideration as an application to file a second or successive petition. For the reasons set forth below, the recommendation will be adopted.

On October 7, 2011, Lee filed a habeas petition pursuant to Title 28 U.S.C. § 2254 and assigned case number 1:11-cv-1909. He was advised that proceeding on the merits of the petition as filed would result in a limitation of his right to file another § 2254 petition in the future. (1:11-cv-1909, Doc. 5.) Lee responded that he wished to proceed on the merits of his initial petition. (*Id.* at Doc. 8.) By order dated March 7, 2013, Lee's initial petition was denied as the grounds for relief were either procedurally defaulted or lacking in merit. *Lee v.*

Harlow, Civ. No. 1:11-cv-1909, 2013 WL 866870 (M.D. Pa. Mar. 7, 2013). This court declined to issue a certificate of appealability. *Id.* at *4.

Lee initiated the captioned petition on November 17, 2015 and an amended petition was filed on February 17, 2016. (Doc. 6.) In the instant petition, Lee challenges his conviction in the York County Court of Common Pleas of first degree murder, aggravated assault, attempted homicide, and criminal conspiracy. He alleges that he has “newly discovered evidence” which would exonerate him from his conviction. This newly discovered evidence consists of a statement given by an inmate to police on March 1, 2013 in which that inmate claimed that one of the Commonwealth’s witnesses at Lee’s trial admitted to being the shooter in the homicide for which Lee was convicted.¹

The magistrate judge opines that because Lee previously filed a § 2254 petition (Civ. No. 1:11-cv-1909), which was denied and had not obtained permission from the Court of Appeals for the Third Circuit to file a second or successive petition, the court is without jurisdiction to entertain the instant petition. The magistrate judge recommends that this matter be transferred to the Third Circuit pursuant to 28 U.S.C. § 1621 for consideration as an application to file a second or successive petition.

¹ Lee filed an amended PCRA petition in the York County Court of Common Pleas in May 2013, which was denied on March 5, 2014. *Commonwealth v. Lee*, Docket No. CP-67-cr-0000332-2004 (York Cnty. C.C.P.)

The recommendation will be adopted.

s/Sylvia H. Rambo

SYLVIA H. RAMBO

United States District Judge

Dated: July 25, 2017