IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JOSHUA STEPHENSON,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 20-443-GBW
	:	
ROBERT MAY, Warden, and ATTORNEY GENERAL OF THE STATE OF DELAWARE,	:	
	:	
Respondents.	:	

MEMORANDUM ORDER

At Wilmington this 5th day of April, 2023, having considered Petitioner's second and incomplete § 2254 petition (D.I. 49) that he filed in the instant proceeding after the Court's denial of his original § 2254 Petition (D.I. 47; D.I. 48);

IT IS HEREBY ORDERED that, to the extent Petitioner's second and partially completed petition presents the same arguments challenging his 2015 convictions that the Court already considered and denied, the petition (D.I. 49) is **DISMISSED** as an unauthorized second or successive habeas petition. *See* 28 U.S.C. § 2244(b)(3)(A); *Benchoff v. Colleran*, 404 F.3d 812, 817 (3d Cir. 2005) (explaining that a habeas petition is classified as second or successive within the meaning of 28 U.S.C. § 2244 if a prior petition has been decided on the merits, the prior and new petitions challenge the same

conviction, and the new petition asserts a claim that was, or could have been, raised in a prior habeas petition).

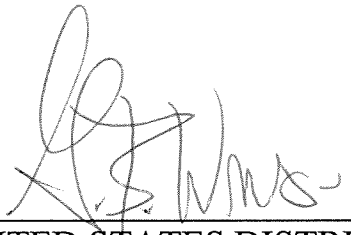
IT IS FURTHER ORDERED that, to the extent the Court should liberally construe the incomplete petition to be a request for a certificate of appealability, the request (D.I. 49) is denied for the same reasons provided in the Court's Memorandum Opinion and Order dated March 9, 2023. (*See* D.I. 47 at 41; D.I. 48)

IT IS FURTHER ORDERED that, to the extent the second petition should be liberally construed as a Rule 59(e) motion to reconsider the Court's decision, the motion (D.I. 49) is denied. Rule 59(e) is "a device [] used to allege legal error,"[1] and may only be used to correct manifest errors of law or fact or to present newly discovered evidence. *See Howard Hess Dental Labs, Inc. v. Dentsply Int'l Inc.*, 602 F.3d 237, 251 (3d Cir. 2010). The scope of a Rule 59(e) motion is extremely limited, and may not be used as an opportunity to relitigate the case. *See Blystone v. Horn*, 664 F.3d 397, 414 (3d Cir. 2011); *see also Brambles USA Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990). The moving party must show one of the following in order to prevail on a Rule 59(e) motion: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court issued its order; or (3) the need to correct a clear error of law or fact or to prevent a manifest injustice. *See Max's Seafood Café v.*

[1]*Fiorelli*, 337 F.3d at 288.

Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). for being untimely. Here, the second petition merely re-asserts the same arguments contained in Petitioner's original § 2254 Petition and, therefore, does not provide any reason warranting reconsideration of the Court's dismissal of his original § 2254 Petition.

IT IS FURTHER ORDERED THAT, to the extent one is required, the Court declines to issue a certificate of appealability. 28 U.S.C. § 2253(c)(2); *see also Slack v. McDaniel*, 529 U.S. 473, 484 (2000).



UNITED STATES DISTRICT JUDGE