

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No: 03-9010 and 03-9011

JOSEPH J. KINDLER

v.

MARTIN HORN, Commissioner, Pennsylvania Department of Corrections;
*DAVID DIGUGLIELMO, Superintendent of the State Correctional
Institution at Graterford; JOSEPH P. MAZURKIEWICZ, Superintendent
of the State Correctional Institution at Rockview,

Appellants

(*Amended - See Clerk's Order dated 1/6/05)

Argued October 15, 2007

BEFORE: McKEE, FUENTES, and STAPLETON Circuit Judges

ORDER AMENDING OPINION

IT IS HEREBY ORDERED that the Order Amending Opinion in this matter, entered September 24, 2008, is vacated. It is further **ORDERED** that the Slip Opinion in this case filed on September 3, 2008, be amended as follows:

The second paragraph on page 15, which reads: “Next, the district court relied in part on *Doctor v. Walters*, 96 F.3d 675 (3d Cir. 1996), in rejecting the Commonwealth’s claim of procedural default. There, we had held that Pennsylvania’s fugitive forfeiture rule was not firmly established when Kindler escaped. Accordingly, “the fugitive forfeiture rule . . . [did] not provide an independent and adequate basis to preclude federal review of [Kindler’s] habeas claims. . .”. *Kindler v. Horn*, 291 F. Supp. 2d at 343.” should be changed to read as follows: “Next, the district court relied in part on *Doctor v. Walters*, 96 F.3d 675 (3d Cir. 1996), in rejecting the Commonwealth’s claim of procedural default. There, we had held that Pennsylvania’s fugitive forfeiture rule was not firmly established when Doctor, the habeas petitioner, escaped in 1986. Accordingly, the district

court held that “the fugitive forfeiture rule . . . [did] not provide an independent and adequate basis to preclude federal review of [Kindler’s] habeas claims. . . .” *Kindler v. Horn*, 291 F. Supp. 2d at 343.

BY THE COURT,

/s/ Theodore A. McKee
Circuit Judge

DATED: September 29, 2008