

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-2179

DARREN JOHNSON,
Appellant

v.

DAVID DIGUGLIELMO*

*(Pursuant to Rule 43(c), F.R.A.P.)

On Appeal from the Order of the United States District Court
for the Eastern District of Pennsylvania
(No. 00-cv-02334)

District Judge: Hon. Petrese Tucker

Argued on March 11, 2008

Before: FUENTES, CHAGARES and ALDISERT, Circuit Judges.

(Opinion Filed: September 1, 2009)

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FUENTES, Circuit Judge.

On April 4, 2005, the District Court declined to review Darren Johnson's habeas petition on the grounds that he had defaulted his claims in state court pursuant to an independent and adequate state procedural rule. The basis for this alleged default is petitioner's violation of Pennsylvania's "previously litigated" rule, which bars a petitioner from seeking review under Pennsylvania's Post-Conviction Relief Act ("PCRA") unless he/she can show that the allegation of error "has not been previously litigated or waived." 42 Pa. Cons. Stat. Ann. § 9544(a). For the reasons laid out in our en banc decision in Boyd v. Warden, the 'previously litigated' rule insulates state courts from duplicative efforts, but does not preclude federal habeas review. Boyd v. Warden, No. 07-2185, 2009 WL 2342892, at *35 (3d Cir. July 31, 2009) (Hardiman, J., dissenting) (en banc).¹ Accordingly, we reverse and remand for further consideration.

¹Although Judge Hardiman dissented in Boyd, the portion of his dissent discussing the previously litigated rule was joined by a majority of the court.