

NOT PRECEDENTIAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-2639

KEVIN STOKES, Appellant
v.

ROY L. HENDRICKS;
ATTORNEY GENERAL OF THE STATE OF
NEW JERSEY, JOHN J. FARMER, JR.

On Appeal From the United States District Court
For the District of New Jersey
(D.C. Civ. No. 00-cv-01442)
District Judge: Honorable John C. Lifland

Argued: May 21, 2002

Before: BECKER, Chief Judge, GREENBERG, Circuit Judge,
and BARZILAY, Judge, U.S. Court of International Trade.

(Filed: May 31, 2002)

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Transcribed by: Geraldine C. Laws, CET

(Proceedings recorded by electronic sound recording;
transcript provided by AAERT-certified transcriber.)

(The following is the bench opinion delivered in
open court:)

BENCH OPINION

BECKER, Chief Judge.

HON. JUDGE BECKER: The judgment of the Court is as follows: The Court has carefully examined the record in this case, and the actions of the District Court. While the Court appreciates that Judge Lifland thought that he was, in practical terms, satisfying the precepts of this Court, announced in *United States v. Miller*, 197 F.3d 644 (3d Cir. 1999), translated to the Section 2254 context in *Mason v. Meyers*, 208 F.3d 414 (3d Cir.2000), the panel is satisfied that his actions do not satisfy those cases.

Therefore, the District Court's order denying habeas corpus relief will be vacated and the case will be remanded to the District Court to provide Stokes the options available under *Miller*. He can either have his petition ruled upon as filed but lose his ability to file successive petitions absent certification by the Court of Appeals, or withdraw the petition and file one all inclusive Section 2254 petition within 120 days and move for abeyance if he desires the Court to consider the issues pending in the State Court post-conviction relief petition.

This panel intimates no view as to what action Judge Lifland should take on any such motion, but leave the matter to him on remand.

Is that agreeable, Judge Greenberg?

HON. JUDGE GREENBERG: Yes.

HON. JUDGE BECKER: Judge Barzilay?

HON. JUDGE BARZILAY: Yes.

HON. JUDGE BECKER: Anything to add, Counsel?

COUNSEL: The only question I had was that will this be communicated to Judge Lifland?

HON. JUDGE BECKER: Oh, yes. This will be transcribed. What I just delivered, I just delivered the bench opinion which will be the opinion and judgment of the Court. It will be transcribed and transmitted to Judge Lifland.

COUNSEL: Thank you.

HON. JUDGE BECKER: Thank you. Appreciate it very much.

(Bench opinion concluded.)

TO THE CLERK:

Please file the foregoing Opinion.

BY THE COURT:

/s/ Edward R. Becker
Chief Judge