

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

July 8, 2009

Nos. 05-9006 & 05-9008

BRIAN THOMAS,

Appellant/Cross-Appellee

v.

MARTIN HORN, et al.,

Appellees/Cross-Appellants

(E.D. Pa No. 00-cv-00803)

Present: McKEE, SMITH and STAPLETON, Circuit Judges

1. Letter construed as Motion by Appellant/Cross-Appellee for Correction of Error in Opinion of the Court Issued on July 1, 2009.
2. Letter by Appellees/Cross-Appellants in Response to Letter construed as a Motion for Correction of Error in Opinion of the Court.

Argued on May 1, 2009.

Opinion and Judgment filed July 1, 2009.

/s/ Nicole M. Rees

Case Manager (267)299-4924

O R D E R

After reviewing the materials submitted by the Appellant/Cross-Appellee, which included, for the first time, his petition for habeas relief, the Motion for Correction of Error in Opinion of the Court is GRANTED. Footnote 2 on pages 7–8 of the Opinion of the Court will be amended as follows:

“it does not appear that Thomas raised these claims in his habeas petition, *see id.* at 495–96, 498” shall be replaced with “it does not appear that the Commonwealth has raised this issue in its cross-appeal”.

By the Court,

/s/ D. Brooks Smith

Circuit Judge

Dated: July 15, 2009

nmr/cc: Robert M. Falin, Esq.

David C. Glebe, Esq.

Billy H. Nolas, Esq.