APPENDIX A

No. 24-3394

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DUSTIN YOUNG,	)	
	)	
Petitioner-Appellant,	)	
	)	
v.	)	ORDER
	)	
JOHN R. SWANEY, Madison County Sheriff; BUTLER COUNTY, OH, COURT OF COMMON PLEAS,	)	
	)	
Respondents-Appellees.	)	

Before: KETHLEDGE, Circuit Judge.

Dustin Young appeals the district court's judgment dismissing his petition for a writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. He applies for a certificate of appealability (COA). *See* Fed. R. App. P. 22(b). Because this circuit's precedent forecloses Young's argument, a COA is denied.

In 2017, Young was convicted after a bench trial of gross sexual imposition, in violation of Ohio Revised Code § 2907.05(A)(1), and abduction, in violation of Ohio Revised Code § 2905.02(A)(2). The convictions involved allegations that Young, a police officer employed

by a public university, had sexual contact by means of force or threat with a female coworker and restrained her liberty by putting her in fear. The trial court sentenced him to five years of community control and imposed reporting obligations on him as a Tier I sex offender. The Ohio Court of Appeals remanded so that the trial court could reconsider its denial of Young's motion for a new trial, but ultimately affirmed. *See State v. Young*, 176 N.E.3d 1074, 1089, 1115 (Ohio Ct. App. 2021), *perm. app. denied*, 179 N.E.3d 122 (Ohio 2022); *State v. Young*, No. CA2018-03-047, 2019 WL 1254197, at *5-8 (Ohio Ct. App. Mar. 18, 2019).

In January 2023, Young filed his § 2254 petition, claiming that his due process and confrontation rights were violated when the State failed to disclose that the victim had hired a civil attorney, made a demand of the university, and engaged in settlement negotiations prior to his trial. Young named as the respondent Madison County Sheriff John R. Swaney, the official responsible for overseeing Young's sex-offender registration obligations.

Swaney moved to dismiss the petition, arguing that Young was not "in custody" under 28 U.S.C. § 2254(a) based solely on his sex-offender registration requirements. *See Steverson v. Summers*, 258 F.3d 520, 522 (6th Cir. 2001) (noting that the in-custody requirement is jurisdictional). Explaining that Young had served the wrong respondent, the district court gave Young an opportunity to substitute the Butler County Court of Common Pleas given that he was still on community control when he filed his petition, but Young declined the invitation. Instead, he moved to add the Butler County court and maintain his action against Swaney, arguing that, despite this court's caselaw to the contrary, Ohio's sex-offender registration requirements satisfy the in-custody require-

ment. *See Hautzenroeder v. DeWine*, 887 F.3d 737, 741-44 (6th Cir. 2018). The district court rejected that argument and dismissed Swaney. The district court then granted the Butler County court's unopposed motion to dismiss, concluding that Young's motion to add the court as a respondent was filed after he had completed his community control and was no longer in custody and after the one-year statute of limitations had expired. The district court also denied a COA.

Young now moves for a COA from this court. He argues that his sex-offender registration obligations render him in custody for purposes of § 2254(a) and reasserts his constitutional challenges to his convictions. Young acknowledges that his custody argument is foreclosed by this court's precedent but indicates that he intends to challenge the holding of *Hautzenroeder* before the en banc court and the Supreme Court, if necessary.

To obtain a COA, an applicant must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the denial of a claim is based on the merits, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When the petition is denied on procedural grounds, the petitioner must show "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.*

Here, reasonable jurists could not debate that Young's custody argument is foreclosed by *Hautzenroeder*. In that case, this court held that Ohio's sex-offender registration obligations are "collateral consequences" of a conviction that, although burdensome, do

not render a petitioner "in custody" for purposes of § 2254(a). 887 F.3d at 740-44; *see Corridore v. Washington*, 71 F.4th 491, 497-99 (6th Cir. 2023) (reaffirming this court's decision in *Hautzenroeder*). Young counters that *Hautzenroeder*'s holding is debatable, pointing to the Third Circuit's decision in *Piasecki v. Court of Common Pleas*, 917 F.3d 161, 166-73 (3d Cir. 2019), which held that Pennsylvania's similar sex-offender registration obligations are sufficiently severe to satisfy the in-custody requirement. Most circuits to weigh in on this issue have sided with this court, however. See *Clements v. Florida*, 59 F.4th 1204, 1212 (11th Cir. 2023) (listing cases).

Despite Young's reliance on *Piasecki*, this court is bound by *Hautzenroeder*. "[A] published prior panel decision 'remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this Court sitting en banc overrules the prior decision.'" *United States v. Elbe*, 774 F.3d 885, 891 (6th Cir. 2014) (quoting *Salmi v. Sec'y of Health & Hum. Servs.*, 774 F.2d 685, 689 (6th Cir. 1985)). And when there is binding precedent from this court, "any persuasive authority from other Circuits is irrelevant." *Freeman v. Wainwright*, 959 F.3d 226, 232 (6th Cir. 2020). As this court has determined previously, "no COA should issue where the claim is foreclosed by binding circuit precedent 'because reasonable jurists will follow controlling law.'" *Mitchell v. United States*, 43 F.4th 608, 616 (6th Cir. 2022) (alteration omitted) (quoting *Hamilton v. Sec'y, Fla. Dep't of Corr.*, 793 F.3d 1261, 1266 (11th Cir. 2015)).

For these reasons, Young's application for a COA is **DENIED**.

ENTERED BY ORDER OF THE COURT

[signature]

Kelly L. Stephens, Clerk