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3-14-2018

## In Re: Charles Smith

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 18-1236

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IN RE: CHARLES E. SMITH,  
Petitioner

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On a Petition for Writ of Mandamus from the  
United States District Court for the Middle District of Pennsylvania  
(Related to M.D. Pa. Civ. No. 1-17-cv-00427)  
District Judge: Honorable Yvette Kane

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Submitted Pursuant to Rule 21, Fed. R. App. P.  
March 9, 2018

Before: RESTREPO, BIBAS and NYGAARD, Circuit Judges

(Opinion filed: March 14, 2018)

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OPINION\*

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PER CURIAM

In March 2017, Charles E. Smith filed a petition pursuant to 28 U.S.C. § 2254 in the United States District Court for the Middle District of Pennsylvania. By order and memorandum entered on April 28, 2017, the District Court dismissed Smith's § 2254 petition without prejudice because there were ongoing state court proceedings, and

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\* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

declined to issue a certificate of appealability. On May 17, 2017, Smith filed a motion for reconsideration of the District Court’s April 28, 2017 order.<sup>1</sup> On January 17, 2018, Smith filed an addendum to his motion for reconsideration, further expanding on his habeas claims. Smith now seeks a writ of mandamus directing the District Court to act on his motion for reconsideration and addendum as the motion for reconsideration was “filed with the District Court over 8 months ago.” Smith has also filed motions to proceed in forma pauperis and to be relieved from the obligation to supply an inmate account statement.

Smith’s motions to proceed in forma pauperis and to be relieved from the obligation to supply an inmate account statement are granted. For the reasons set forth below, we will deny the petition for mandamus.

Mandamus is a drastic remedy available in only the most extraordinary circumstances. In re Diet Drugs Prods. Liab. Litig., 418 F.3d 372, 378 (3d Cir. 2005). “A petitioner seeking the issuance of a writ of mandamus must have no other adequate means to obtain the desired relief, and must show that the right to issuance is clear and indisputable.” Madden v. Myers, 102 F.3d 74, 79 (3d Cir. 1996). As a general rule, “matters of docket control” are within the discretion of the District Court. In re Fine Paper Antitrust Litig., 685 F.2d 810, 817 (3d Cir. 1982). Nonetheless, an appellate court may issue a writ of mandamus when an undue delay in adjudication is “tantamount to a

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<sup>1</sup> On July 29, 2017, Smith filed a notice of appeal. The appeal is stayed pending disposition of his motion for reconsideration in the District Court.

failure to exercise jurisdiction.” Madden, 102 F.3d at 79. Smith cannot satisfy this standard.

While an eight-month delay in the resolution of Smith’s motion for reconsideration may cause some concerns, we do not believe that the delay in ruling on motion is so lengthy that it is “tantamount to a failure to exercise jurisdiction.” See id. (holding that delay of over five months was “of concern,” though not yet a denial of due process); see also Johnson v. Rogers, 917 F.2d 1283, 1285 (10th Cir. 1990) (holding that mandamus relief was appropriate after a delay of fourteen months due only to docket congestion). Moreover, in light of the fact that Smith has now filed an addendum for the District Court’s review, we are confident that the District Court will rule on the motion for reconsideration and addendum without undue delay.

Accordingly, we will deny Smith’s petition, but without prejudice to his filing another in the event the District Court does not rule on his motion within 60 days.