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USA v. Frederick Banks

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-1192

UNITED STATES OF AMERICA

v.

FREDERICK H. BANKS,
Appellant

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Criminal Action No. 04-cr-00176-001)
District Judge: Honorable Joy Flowers Conti

Submitted on Appellee's Motion for Summary Action
Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
April 21, 2022

Before: MCKEE, GREENAWAY, JR., and PORTER, Circuit Judges

(Opinion filed: May 20, 2022)

OPINION*

PER CURIAM

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

Frederick Banks appeals the District Court's order denying his petition for a writ of coram nobis. For the reasons below, we will summarily affirm the District Court's order.

The procedural history of this case and the details of Banks's claims are well known to the parties and need not be discussed at length. In 2005, Banks was convicted of mail fraud and was subsequently sentenced to 63 months in prison and three years of supervised release. On direct appeal, we affirmed his conviction and sentence. See United States v. Banks, 300 F. App'x 145, 154 (3d Cir. 2008). In 2011, Banks filed a motion pursuant to 28 U.S.C. § 2255 which the District Court denied. We denied Banks's request for a certificate of appealability. See C.A. No. 12-1336. His sentence, including the supervised release, expired in May 2015. See United States v. Banks, 612 F. App'x 643, 643 (3d Cir. 2015) (per curiam).

In August 2021, Banks filed a petition for a writ of coram nobis. After the District Court denied the petition, Banks filed a notice of appeal. The Government has filed a motion for summary affirmance of the District Court's order, and Banks has filed a response in opposition.

We have jurisdiction pursuant to 28 U.S.C. § 1291 and exercise de novo review over legal issues arising from the denial of coram nobis relief. See Ragbir v. United States, 950 F.3d 54, 60 (3d Cir. 2020). As noted by the Government, Banks filed an identical coram nobis petition in another criminal case. We summarily affirmed the District Court's denial of that petition. United States v. Banks, No. 21-2770, 2022 WL

39842, at *1 (3d Cir. Jan. 5, 2022). And we will summarily affirm the District Court's order here for the same reasons. Banks has not asserted a fundamental error in his criminal proceedings that would entitle him to coram nobis relief. See Ragbir, 950 F.3d at 62.

Summary action is appropriate if there is no substantial question presented in the appeal. See Third Circuit LAR 27.4. For the above reasons, we grant the Government's motion and will summarily affirm the District Court's order. See Third Circuit I.O.P. 10.6.