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Paul Bishop v. US Department of Agriculture

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3755

PAUL J. BISHOP,
Appellant

v.

US DEPARTMENT OF AGRICULTURE;
THE MERIT SYSTEMS PROTECTION BOARD

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 3-17-cv-03372)
District Judge: Honorable Brian R. Martinotti

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
April 19, 2018
Before: CHAGARES, GREENAWAY, Jr., and FUENTES, Circuit Judges

(Opinion filed: June 6, 2018)

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.

Pro se appellant Paul J. Bishop appeals from the District Court's order dismissing his complaint sua sponte on the grounds that it was frivolous and failed to state a claim, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii). We will dismiss the appeal under 28 U.S.C. § 1915(e)(2)(B)(i) because it has no arguable basis in law or fact.

I.

Because we write primarily for the parties, who are already familiar with this case, we include only those facts necessary to reach our conclusion.

In 2015, Bishop filed a Title VII complaint against the United States Department of Agriculture. The District Court granted a motion to dismiss, and Bishop appealed. This Court affirmed the judgment of the District Court. See Bishop v. U.S. Dep't of Agric., ___ F. App'x ___, 2018 WL 798474 (3d Cir. Feb. 9, 2018, No. 17-2566) (per curiam).

In 2017, Bishop filed a nearly identical complaint in the District Court. The District Court dismissed the complaint sua sponte as frivolous and for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii). This appeal followed.

II.

We have jurisdiction under 28 U.S.C. § 1291. See Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000). Section 1915(e)(2)(B)(i) requires us to dismiss an appeal that lacks an arguable basis in law or fact. See Azubuko v. Royal, 443 F.3d 302, 303 (3d Cir. 2006) (per curiam) (citing Neitzke v. Williams, 490 U.S. 319, 325 (1989)).

We agree with the District Court's dismissal of the suit on the basis that it repeats the exact same claims the District Court and this Court have previously rejected. See Bishop, 2018 WL 798474 at *2. Bishop provided no new argument in the District Court why his claims had merit, and has not made any such argument on appeal. Thus, Bishop's appeal lacks arguable merit, and we will dismiss the appeal pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).