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In re: Richard Adebayo

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-3461

IN RE: RICHARD ADEBAYO,
Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the District of New Jersey
(Related to D.N.J. Civ. No. 2-15-cr-00550-001)
District Court Judge: Madeline C. Arleo

Submitted Pursuant to Rule 21, Fed. R. App. P.
December 27, 2018
Before: AMBRO, KRAUSE, and PORTER, Circuit Judges

(Opinion filed: January 9, 2019)

OPINION*

PER CURIAM

Petitioner Richard Adebayo has filed a mandamus petition concerning the ongoing criminal case against him in the United States District Court for the District of New Jersey. The District Court set forth the pertinent history in its Continuance Order entered on December 17, 2018, so we present only a brief summary. In October 2015, Adebayo and a co-defendant, Amos Peter Agbajaife, were indicted on charges relating to wire

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

fraud and aggravated identity theft. Adebayo's arraignment was in November 2015. In 2016, he was released from pretrial detention under certain conditions of release, but he fled the District of New Jersey. In June 2017, Adebayo was arrested in California and was transferred back to the District of New Jersey, and he was detained pending trial. In October 2017, the District Court granted his motion to proceed pro se; standby counsel was appointed. Adebayo filed a number of pretrial motions. In December 2017, at a hearing on the motions, the District Court set a trial date of March 5, 2018, a date later rescheduled to May 15, 2018.

In April 2018, over Adebayo's objection, the District Court granted the Government's motion for a continuance of the Speedy Trial Act from April 6, 2018 to May 15, 2018. On May 14, 2018, Adebayo was arraigned on a superseding indictment concerning his co-defendant Agbajaiife, again on multiple charges relating to wire fraud and aggravated identity theft. Adebayo was also charged with a count of failure to appear. The Government filed another motion to exclude time under the Speedy Trial Act. Adebayo filed several motions, including a motion for bond, and a motion to dismiss the indictments and for release from custody.

Adebayo then filed this mandamus petition. In support of his petition, Adebayo states that his right to a speedy trial has been violated, and that pre-trial motions remain pending in the District Court. As relief, Adebayo asks this Court to compel the District Court to set a trial date.

We will deny Adebayo’s mandamus petition, because no “extraordinary circumstances” exist to justify granting this drastic remedy. See In re Diet Drugs Prods. Liab. Litig., 418 F.3d 372, 378 (3d Cir. 2005). To demonstrate that mandamus relief is appropriate, a petitioner must establish that he has “no other adequate means” to obtain the relief requested, and that he has a “clear and indisputable” right to issuance of the writ. Madden v. Myers, 102 F.3d 74, 79 (3d Cir. 1996). Adebayo cannot make this showing, because the District Court docket now reflects that he already has received the relief sought. With standby counsel present on Adebayo’s behalf, the District Court held a status conference on November 30, 2018, during which a trial date was set for January 29, 2019.¹ To the extent that Adebayo seeks redress on his claim of a Speedy Trial Act violation, this type of argument may be raised on a direct criminal appeal. Mandamus must not be used as a substitute for an appeal. See In re Kensington Int’l Ltd., 353 F.3d 211, 219 (3d Cir. 2003).

¹ In addition, a response date for motions was set for December 20, 2018, and a motions hearing was scheduled for January 8, 2019.