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John McCarthy v. Warden Lewisburg USP

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-1489

JOHN J. MCCARTHY,
Appellant

v.

WARDEN LEWISBURG USP

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civ. No. 1-17-cv-00015)
District Judge: Honorable John E. Jones III

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

May 4, 2017

Before: SHWARTZ, NYGAARD, and FISHER, Circuit Judges

(Opinion filed: May 9, 2017)

OPINION*

PER CURIAM

John J. McCarthy is serving a federal sentence imposed by the United States District Court for the District of Connecticut. McCarthy has an extensive history of challenging his conviction and aspects of his imprisonment through habeas petitions

under 28 U.S.C. § 2241 in his district of confinement. See, e.g., McCarthy v. Warden Lewisburg USP, 631 F. App'x 84, 86-87 (3d Cir. 2015) (affirming denial of § 2241 claim relating to loss of good conduct time); McCarthy v. Warden Lewisburg USP, 629 F. App'x 157, 158-60 (3d Cir. 2015) (affirming denial of § 2241 claim regarding transfer to the Special Management Unit (“SMU”) and holding that challenge to the calculation of his sentence was an abuse of the writ); McCarthy v. Warden, USP Lewisburg, 436 F. App'x 68, 69 (3d Cir. 2011) (holding that McCarthy could not resort to § 2241 to challenge his conviction on the basis of alleged structural errors).

This appeal concerns another of McCarthy's § 2241 petitions. In this petition, he briefly referred to his prior challenges to his placement in the SMU, his loss of good conduct time, and alleged structural defects at his trial. He also asserted that the District Court had wrongfully denied his previous challenges, and he asked to “relitigate all cases dismissed.” He did not assert any new claims or rely on any new facts or new law. The District Court, acting on a Magistrate Judge's recommendation, dismissed McCarthy's petition as an abuse of the writ. McCarthy appeals. We will affirm for the reasons that the Magistrate Judge and the District Court explained.¹

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

¹ McCarthy does not require a certificate of appealability to appeal the denial of his § 2241 petition, see Burkey v. Marberry, 556 F.3d 142, 146 (3d Cir. 2009), and we have jurisdiction under 28 U.S.C. § 1291. It appears that McCarthy was released from federal prison after he filed his petition, but his petition and this appeal are not moot to the extent that he seeks to challenge his conviction (at least) because he is still serving a five-year term of supervised release. See id. at 148.