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In Re: Charles Senke

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1443

IN RE: CHARLES J. SENKE,
Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the Middle District of Pennsylvania
(Related to 3:16-cr-00373-001)

Submitted Pursuant to Rule 21, Fed. R. App. P.
May 25, 2023

Before: JORDAN, CHUNG, and SCIRICA, Circuit Judges

(Opinion filed June 7, 2023)

OPINION*

PER CURIAM

Charles Senke is a federal prisoner currently incarcerated at FCI-Allenwood. Senke petitions for a writ of mandamus to compel the United States District Court for the Middle District of Pennsylvania to adjudicate his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255.

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

Senke filed the § 2255 motion in February 2022, and the Government filed its response in April 2022. Senke filed a brief in support of the motion in May 2022. The motion is still pending in the District Court.

“Traditionally, the writ of mandamus has been used to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.” In re Chambers Dev. Co., 148 F.3d 214, 223 (3d Cir. 1998) (quotation marks omitted). “The writ is a drastic remedy that is seldom issued and its use is discouraged.” Id. (quotation marks omitted). We may issue a writ of mandamus when a district court’s “undue delay is tantamount to a failure to exercise jurisdiction.” Madden v. Myers, 102 F.3d 74, 79 (3d Cir. 1996).

We will deny the petition. After Senke filed his mandamus petition in this Court, the District Court entered an order directing the Government to provide a substantive response to Senke’s May 2022 brief.¹ Therefore, the District Court is moving forward with the case, and we are confident that it will adjudicate his pending § 2255 motion in a timely manner.

Accordingly, we will deny the petition for a writ of mandamus.

¹ The Government’s reply is currently due June 14, 2023.