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In Re: Frederick Banks

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1951

IN RE: FREDERICK H. BANKS,
Petitioner

On Petition for a Writ of Mandamus
to the United States District Court
for the Western District of Pennsylvania
(D.C. No. 2:15-cr-00168-001)
Chief District Judge: Honorable Mark R. Hornak

Submitted Pursuant to Federal Rule of Appellate Procedure 21
on June 11, 2020

Before: AMBRO, GREENAWAY, JR., and BIBAS, Circuit Judges

(Opinion filed: July 8, 2020)

OPINION*

PER CURIAM

Frederick Banks, proceeding pro se, has filed a petition for a writ of mandamus asking this Court to order the United States District Court for the Western District of Pennsylvania

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

to sentence him in his criminal case or release him from custody. He also asks us to compel the District Court Clerk to docket a notice of appeal that he submitted in a civil case. We will deny the petition as to his criminal case and dismiss the petition as moot as to his civil case.

Banks was convicted in the District Court on November 7, 2019, of wire fraud and aggravated identity theft. In his mandamus petition, he asserts that he has not yet been sentenced, that he has a right to a prompt sentencing hearing, and that the time he has served exceeds his potential sentence.

“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) (quoting Will v. Calvert Fire Ins. Co., 437 U.S. 655, 661 (1978) (plurality opinion)). “The writ is a drastic remedy that ‘is seldom issued and its use is discouraged.’” Id. (quoting Lusardi v. Lechner, 855 F.2d 1062, 1069 (3d Cir. 1988)). A petitioner must establish that there are no other adequate means to attain the desired relief and that the right to the writ is clear and indisputable. Id. Mandamus relief may be afforded where undue delay is tantamount to a failure to exercise jurisdiction. Madden v. Myers, 102 F.3d 74, 79 (3d Cir. 1996).

The District Court docket in Banks’s criminal case reflects that the District Court issued tentative findings related to his sentencing on June 8, 2020, that a sentencing hearing was held on June 9, 2020, and that the hearing was continued and will be reset after consultation with counsel. See United States v. Banks, No. 2:15-cr-00168-001, Dkt. Nos. 1267–1269 (W.D. Pa.). Because the District Court has taken action toward sentencing Banks, he has

counsel, and it appears that his sentencing will be completed soon, mandamus relief is not warranted.

Banks also asserts that the District Court Clerk has not docketed notices of appeal that he submitted from an order denying his motion to intervene in a class action lawsuit seeking the release of prisoners who have a heightened risk of illness or death from COVID-19. The District Court docket in that civil case, however, reflects that Banks's notice of appeal has been docketed since he prepared his mandamus petition. See Graham v. Allegheny County, No. 2:20-cv-00496, Dkt. No. 62 (W.D. Pa.). His request for relief related to this case is thus moot. See Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 698–99 (3d Cir. 1996) (“If developments occur during the course of adjudication that . . . prevent a court from being able to grant the requested relief, the case must be dismissed as moot.”).

Accordingly, we will deny the mandamus petition as to Banks's criminal case and dismiss the petition as moot as to his civil case.