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8-4-2005

## Bartlebaugh v. Corcoran

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 05-1874

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LOUIS BARTLEBAUGH,

Appellant

v.

RICHARD CORCORAN

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On Appeal From the United States District Court  
For the Western District of Pennsylvania  
(D.C. Civ. No. 05-cv-00048J)  
District Judge: Honorable Kim R. Gibson

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Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B) or Summary Action  
Under Third Circuit LAR 27.4 and I.O.P. 10.6  
June 30, 2005

Before: ALITO, MCKEE and AMBRO, Circuit Judges

(Filed : August 4, 2005)

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OPINION

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PER CURIAM

Louis Bartlebaugh appeals the District Court's order granting appellee Richard Corcoran's motion to dismiss Bartlebaugh's complaint. Bartlebaugh filed a complaint in

state court alleging that Corcoran committed malpractice in Bartlebaugh's direct appeal from his criminal conviction. Corcoran removed the case to the District Court for the Western District of Pennsylvania and filed a motion to dismiss. The District Court granted the motion to dismiss, and Bartlebaugh filed a timely notice of appeal. We have jurisdiction under 28 U.S.C. § 1291.

The District Court dismissed the complaint on the ground that Bartlebaugh's claims were barred by claim preclusion because he had previously brought the claims in a prior action. Our review of the District Court's application of res judicata is plenary. Venuto v. Witco Corp., 117 F.3d 754, 758 (3d Cir. 1997). We agree with the District Court that Bartlebaugh's current claims are barred because he brought them in a previous action. See Bartlebaugh v. Lazarri, W.D. Pa. Civ. No. 04-cv-228J.

Summary action is appropriate if there is no substantial question presented in the appeal. See Third Circuit LAR 27.4. For the above reasons, as well as those set forth by the District Court, we will summarily affirm the District Court's order. See Third Circuit I.O.P. 10.6. Appellant's motion for the appointment of counsel is denied.