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for the Third Circuit

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Casey Hoey v. Steven Toprani

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-2172

CASEY LEE HOEY,
Appellant

v.

DISTRICT ATTORNEY STEVEN TOPRANI;
PAUL POZONSKY, Trial Court Judge;
JOHN C. PETTIT, Former District Attorney/and Appellee;
PA SUPREME COURT; PA SUPERIOR COURT

On Appeal from the United States District Court
for the Western District of Pennsylvania
D.C. Civil Action No. 08-00331
(Honorable Gary L. Lancaster)

Submitted for Possible Summary Action Pursuant to
Third Circuit LAR 27.4 and I.O.P. 10.6
or a Certificate of Appealability Under 28 U.S.C. § 2253
June 30, 2008

Before: SCIRICA, Chief Judge, ALDISERT and GARTH, Circuit Judges.

(Filed July 23, 2008)

OPINION OF THE COURT

PER CURIAM.

Casey Lee Hoey, a pro se prisoner, filed a mandamus petition in the United States District Court for the Western District of Pennsylvania on March 25, 2008, seeking an order directing the Pennsylvania state courts to dismiss the criminal charges against him and release him from prison. The District Court determined that Hoey was not entitled to the extraordinary remedy of mandamus and denied his petition, and Hoey appealed. We will summarily affirm.¹

Hoey pled guilty to the charge of first-degree murder in Washington County, Pennsylvania, on March 26, 2003. He did not file a direct appeal. He later filed several petitions for post-conviction relief, which the PCRA court dismissed as untimely. Hoey contends that Pennsylvania's criminal code is invalid, and, therefore, that the trial court lacked subject matter jurisdiction over his criminal prosecution. He also contends that the one-year filing deadline contained in 42 Pa. C.S. §9451, et. seq. unlawfully deprives him of any state court review of the merits of his claims.

Under the All Writs Act, federal courts may “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). As a general matter, federal courts cannot use that power to control or interfere with state court litigation. In re Campbell, 264 F.3d 730

¹Although Hoey seeks release from prison, he initiated this proceeding as a mandamus action, not a habeas proceeding. Accordingly, a certificate of appealability is not required. 28 U.S.C. § 2253.

(7th Cir. 2001). Hoey has neither demonstrated that issuance of a writ of mandamus would be in aid of our jurisdiction, nor shown extraordinary circumstances that could conceivably warrant resort to the remedy of mandamus.

As this appeal presents no substantial question, we will summarily affirm.² Hoey's motion for the appointment of counsel is denied.

²In reaching this decision, we have considered the arguments Appellant raised in his motion and the documents (Pennsylvania Constitution) and his two memoranda of law. To the extent that Appellant's motion seeks summary action in his favor, that motion is denied.