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Bricker v. Comm of PA

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ALD-255

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 06-4713

RONALD L. BRICKER,

Appellant

v.

COMMONWEALTH OF PENNSYLVANIA;
JOSEPH H. KLEINFELTER; JUSTIN J. MCSHANE;
MARK F. BAYLEY; JEN BEVAN; R. MARK THOMAS;
DIANE MORGAN

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civ. No. 06-CV-01729)
District Judge: Honorable Sylvia H. Rambo

Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B) or Possible Summary
Action Under Third Circuit LAR 27.4 and I.O.P. 10.6
June 7, 2007

BEFORE: SLOVITER, CHAGARES and GREENBERG, CIRCUIT JUDGES

(Filed June 20, 2007)

OPINION

PER CURIAM

Ronald L. Bricker appeals from an order of the United States District Court for the

Middle District of Pennsylvania, dismissing his complaint without prejudice, and from an order denying his motion for reconsideration. For the reasons that follow, we will dismiss the appeal pursuant to 28 U.S.C. § 1915(e).

Bricker's complaint in the District Court was purportedly filed pursuant to 42 U.S.C. § 1983. However, the allegations of his complaint concerned the manner in which he was convicted, and his continued confinement. The District Court correctly concluded that to the extent Appellant was challenging the fact or duration of his conviction or sentence, his remedy is in the form of habeas, not 42 U.S.C. § 1983. See Leamer v. Fauver, 288 F.3d 532, 542 (3d Cir. 2002) ("whenever the challenge ultimately attacks the 'core of habeas'--the validity of the continued conviction or the fact or length of the sentence--a challenge, however denominated and regardless of the relief sought, must be brought by way of habeas corpus petition").

Because Bricker's appeal is legally frivolous, we must dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).¹

¹ We further find no error in the District Court's decision to deny Bricker's motion for reconsideration.