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Reaves v. USA

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APS-173

UNREPORTED - NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 05-5040

UNITED STATES OF AMERICA

v.

REGINALD REAVES,
Appellant

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 05-cv-05033)
District Judge: Honorable Marvin Katz

Submitted Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
March 23, 2006

BEFORE: SLOVITER, McKEE and FISHER, CIRCUIT JUDGES

(Filed: April 13, 2006)

OPINION

PER CURIAM

Reginald Reaves was convicted of various drug-related crimes following a jury trial in the United States District Court for the Eastern District of Pennsylvania. We affirmed in United States v. Price, 13 F.3d 711 (3d Cir. 1994). Since then Reaves has

unsuccessfully attacked his conviction and sentence through a series of collateral challenges under 28 U.S.C. §§ 2255 and 2241, 18 U.S.C. § 3582(c)(2), and the All Writs Act, 28 U.S.C. § 1651 (specifically, the ancient writs of *error coram nobis* and *audita querela*).

In 2005 Reeves filed another attack on his sentence via a petition for a writ of *audita querela*, seeking relief pursuant to United States v. Booker, 543 U.S. 220 (2005). Reeves has appealed the District Court's denial of his petition. We will summarily affirm under Third Circuit LAR 27.4 and I.O.P. 10.6, because it clearly appears that no substantial question is presented by this appeal.

A motion to vacate sentence pursuant to 28 U.S.C. § 2255 is the exclusive means to challenge collaterally a federal conviction or sentence. The All Writs Act is a residual source of authority to issue writs in exceptional circumstances only. Pennsylvania Bureau of Correction v. U.S. Marshals Serv., 474 U.S. 34, 43 (1985). In United States v. Valdez-Pacheco, 237 F.3d 1077 (9th Cir. 2001), the Court of Appeals for the Ninth Circuit held, and we agree, that “[a] prisoner may not circumvent valid congressional limitations on collateral attacks by asserting that those very limitations create a gap in the postconviction remedies that must be filled by the common law writs” such as *audita querela*. Id. at 1080. Thus, we have held that section 2255 is not rendered “inadequate or ineffective,” thereby enabling a prisoner to resort to *coram nobis*, by the mere fact that he cannot meet the stringent standards for authorizing the filing of a second or successive section 2255

motion. United States v. Baptiste, 223 F.3d 188, 189-90 (3d Cir. 2000) (per curiam). The same applies to petitions for a writ of *audita querela*. See United States v. Holt, 417 F.3d 1172, 1175 (11th Cir. 2005) (writ of *audita querela* unavailable where relief is cognizable under section 2255).¹

Accordingly, we will summarily affirm the order of the District Court.

¹ We note that even if *audita querela* were otherwise available, Reaves would not be able to rely on Booker because that decision does not apply retroactively to cases on collateral review. See Lloyd v. United States, 407 F.3d 608 (3d Cir. 2005); In re Olopade, 403 F.3d 159 (3d Cir. 2005).