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2006 Decisions

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States Court of Appeals  
for the Third Circuit

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4-5-2006

## Willaman v. Ferentino

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**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

NO. 05-1116

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TERRANCE ROSS WILLAMAN,

Appellant

v.

MAURICE J. FERENTINO; MARSHALL J. PICCININI, ASST. D.A.;  
JOHN ASHCROFT; OTHERS KNOWN AT THIS TIME

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On Appeal From the United States District Court  
For the Western District of Pennsylvania  
(D.C. Civ. No. 04-cv-00132E)  
District Judge: Honorable Maurice B. Cohill, Jr.

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Submitted Under Third Circuit LAR 34.1(a)  
May 27, 2005

BEFORE: ROTH, McKEE and ALDISERT, CIRCUIT JUDGES

(Filed April 5, 2006 )

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OPINION

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PER CURIAM

Terrance Ross Willaman appeals the District Court's order dismissing his petition for declaratory and injunctive relief and denying his motion to convene a grand jury. In his petition, Willaman sought declaratory and injunctive relief including that the government be enjoined from prosecuting him.<sup>1</sup> He argued that he had a right to possess an unregistered machine gun under the First Amendment, the Religious Freedom Restoration Act, and the Second Amendment. He further asserted that the government violated his rights under the Fourth and Fifth Amendments. The appellees filed a motion to dismiss. On December 20, 2004, the District Court dismissed his petition for relief for failure to state a claim and denied his motion to convene a grand jury as moot. Willaman filed a timely notice of appeal, and we have jurisdiction under 28 U.S.C. § 1291. The government has filed a motion for summary affirmance.

We exercise plenary review over the District Court's order granting appellees' motion to dismiss. Gallo v. City of Philadelphia, 161 F.3d 217, 221 (3d Cir. 1998). When reviewing a complaint for failure to state a claim, the Court must accept the allegations in the complaint as true. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). The Court should not dismiss a complaint unless it is clear that no relief could be granted under any set of facts that could be proved. Id.

On appeal, Willaman raises only his Second Amendment argument and argues that the District Court decided the case based on bias in favor of the government. Declaratory

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<sup>1</sup> In October 2004, Willaman was convicted by a jury of unlawful possession of a machine gun.

relief is not available to attack a criminal conviction. Johnson v. Onion, 761 F.2d 224 (5th Cir. 1985); Shannon v. Sequechi, 365 F.2d 827, 829 (10th Cir. 1966) (“The [Declaratory Judgment] Act does not provide a means whereby previous judgments by state or federal courts may be reexamined, nor is it a substitute for appeal or post conviction remedies.”). Willaman has the opportunity to raise his Second Amendment argument in his direct appeal from his criminal conviction, and we note that he has done so. See United States v. Willaman, C.A. No. 05-1336. Moreover, Willaman’s claims are not cognizable to the extent that a favorable resolution of his claims would imply that his conviction is invalid. Edwards v. Balisok, 520 U.S. 641 (1997); Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). With respect to Willaman’s assertion that the District Court was biased in favor of the government, we note that he argues that the District Court Judge’s bias “should be self-evident from his ruling in this action.” Brief at 9. A litigant’s displeasure with the District Court’s legal rulings is not an adequate basis for recusal. Securacomm Consulting, Inc. v. Securacom Inc., 224 F.3d 273, 278 (3d Cir. 2000).

For the above reasons, as well as those set forth by the District Court, we will affirm the District Court’s judgment.