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Bruce Murray v. David DiGuglielmo

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-1346

BRUCE MURRAY,
Appellant

v.

SUPT. D. DIGUGLIELMO, Graterford Prison;
CAPTAIN THOMAS DOHMAN;
LIEUTENANT JOHN MOYER, Graterford Prison;
JOHN DOE'S; MARY CANINO, Hearing Examiner

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 09-cv-02310)
District Judge: Honorable Stewart Dalzell

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B)
or Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
April 15, 2010

Before: SLOVITER, AMBRO and SMITH, Circuit Judges

(Opinion filed :April 19, 2010)

OPINION

PER CURIAM

Bruce Murray appeals from an order of the District Court dismissing his "Request

for Forma Pauperis.” For the reasons set forth below, we will summarily affirm. See I.O.P. 10.6.

I.

In May 2009, Murray, a pro se prisoner, filed a civil action pursuant to 42 U.S.C. § 1983 against the Superintendent at the State Correctional Institution at Graterford (“SCI Graterford”), David DiGuglielmo, as well as several other employees at SCI Graterford. After Murray filed an amended complaint in the case, the Defendants moved to dismiss the action. The District Court determined that, even construing the amended complaint liberally, Murray’s claims were barred by the applicable statute of limitations. In an August 2009 decision, the District Court dismissed the case pursuant to Fed. R. Civ. P. 12(b)(6) and Murray filed a timely appeal. In November 2009, this Court granted Murray’s motion to proceed in forma pauperis (“IFP”). While his appeal remained pending in this Court, Murray filed in the District Court a “Request for Forma Pauperis,” apparently seeking to be granted additional IFP status in the District Court. In a January 2010 order, the District Court denied the request, finding that because Murray had already filed an appeal in this Court, the District Court had been divested of jurisdiction over the case.¹ Murray filed a timely notice of appeal in this Court seeking review of that determination.

¹The District Court’s order also directed the clerk to forward Murray’s IFP request to this Court. However, as mentioned earlier, we had already granted Murray’s IFP motion.

II.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. The District Court appropriately denied Murray's "Request for Forma Pauperis." As the District Court correctly noted, Murray had already filed an appeal to this Court of the District Court's final judgment and thus the District Court had been divested of jurisdiction. See Venen v. Sweet, 758 F.2d 117, 120 (3d Cir. 1985) (generally, the filing of a notice of appeal divests the district court of jurisdiction over the case pending disposition of the appeal). Furthermore, by the time Murray filed his request in the District Court, his IFP motion had already been granted in this Court.

As there is no substantial question presented by this appeal, we will summarily affirm. See Third Cir. LAR 27.4; I.O.P. 10.6. Appellant's motion for counsel, as well as his motion requesting transcripts of the complete record and docket entries, are denied.