2-8-2006

# In Re: Robinson

**HPS-34** **NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 05-5421

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IN RE: RUSSELL ROBINSON,
Petitioner

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On a Petition for Writ of Mandamus from the
District Court of the Virgin Islands
(Related to D.V.I. Crim. No. 04-cr-00005-2)

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Submitted Under Rule 21, Fed. R. App. Pro.
January 27, 2006
Before: CHIEF JUDGE SCIRICA, WEIS AND GARTH, CIRCUIT JUDGES
Filed: February 8, 2006

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PER CURIAM.

Following the Government's successful pretrial appeal in United States v. Hendricks, 395 F.3d 173, 184 (3d Cir. 2005), a jury convicted Russell Robinson. A hearing on post-trial motions is set for February 13, 2006. Robinson asks that we issue a writ of mandamus directing the District Court to also hold a hearing on his claims that retained counsel performed ineffectively at trial. See Strickland v. Washington, 466 U.S. 668, 694 (1984). We will deny the petition.

More than a dozen times since the jury's verdict, Robinson—acting *pro se*— has asked the District Court to hear his Strickland claims now. In a single order entered on December 27, 2005, the District Court denied Robinson's motions, explaining

that they were premature. The District Court noted that it had not yet determined whether a new trial might be warranted, and it stressed that Robinson would have ample opportunity to allege ineffectiveness after sentencing. See District Court Order of December 27, 1.

Mandamus is an appropriate remedy only in the most extraordinary of situations. Sporck v. Peil, 759 F.2d 312, 314 (3d Cir. 1985). To justify such a remedy, a petitioner must show that he has (i) no other adequate means of obtaining the desired relief and (ii) a "clear and indisputable" right to issuance of the writ. See Haines v. Liggett Group, Inc., 975 F.2d 81, 89 (3d Cir. 1992) (citing Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976)). Robinson has not demonstrated a "clear and indisputable" right to mandamus relief.

As the District Court explained, Robinson's request for a Strickland hearing was premature. We have repeatedly expressed a strong preference that Strickland claims be pursued "through a collateral proceeding in which the factual basis for the claim[s] may be developed." United States v. Haywood, 155 F.3d 674, 678 (3d Cir. 1998). There exists a narrow exception to this preference, but it permits this court to review ineffectiveness claims on direct appeal only when factual development of the claims is unnecessary. See United States v. Headley, 923 F.3d 1079, 1083 (3d Cir. 1991). The District Court's reasoning for denying Robinson's motions for a pre-sentencing Strickland hearing is consistent with these precepts. Indeed, it is difficult to see how, as a practical matter, Robinson could develop any factual basis for his ineffective claims *while*

counsel continues to represent him in post-trial proceedings. See Robinson's "Informative Motion," 5-6 (detailing several claims, including that counsel was unprepared for trial). In any event, if necessary, Robinson will be able to pursue his ineffectiveness claims in due course.[1]

For the reasons given, we will deny the petition for a writ of mandamus.

[1] We note, too, that the District Court's refusal to schedule a post-trial hearing for a particular purpose, or entertain certain post-trial claims, would be reviewable on direct appeal. See In re Kensington Int'l, Ltd., 353 F.3d 211, 219 (3d Cir. 2003) ("[i]f, in effect, an appeal will lie, mandamus will not").