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Der Weer v. USA

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-1392

GORDON R. DER WEER,
Appellant

v.

UNITED STATES OF AMERICA;
FEDERAL BUREAU OF PRISONS

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE VIRGIN ISLANDS
D.C. Civil No. 01-cv-00118
District Judge: The Honorable Raymond L. Finch, Chief Judge

Argued: December 5, 2006

Before: McKEE, BARRY and STAPLETON, Circuit Judges

(Opinion Filed: January 5, 2007)

Renee D. Dowling, Esq. (Argued)
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Counsel for Appellees

OPINION

BARRY, Circuit Judge

After five years of proceedings before the District Court, the Court dismissed the complaint of appellant Gordon R. Der Weer. Der Weer concedes that he failed to properly plead either a Bivens action or a claim under 42 U.S.C. § 1983, but argues that the District Court should not have dismissed his complaint on those “purely technical grounds” and should have permitted him to file the identical amended complaint the Court rejected in March 2002. He asks, in the alternative, that we permit him to amend his complaint under 28 U.S.C. § 1653 so he can, at this late date, cure what he describes as his defective allegations of subject matter jurisdiction.

We have considered the submissions of the parties and have heard oral argument. Nothing need be said other than that in November 2002, the District Court granted leave to Der Weer to file an amended complaint and in January 2003, April 2003, and April 2004, confirmed its intent to accept an amended complaint in proper form. Der Weer filed nothing.

The order of the District Court will be affirmed.