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2-25-2015

In Re: George Johnson, Jr.

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 14-4600

IN RE: GEORGE JOHNSON, JR.,
Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the
Eastern District of Pennsylvania
(Related to E.D. Pa. No. 2-13-cv-05542)

Submitted Pursuant to Rule 21, Fed. R. App. P.
February 12, 2015

Before: FUENTES, GREENAWAY, JR. and VANASKIE, Circuit Judges

(Filed: February 25, 2015)

OPINION*

PER CURIAM

Petitioner George Johnson, Jr., proceeding pro se and in forma pauperis, petitions for a writ of mandamus, “pursuant to the denial of a Petition and Motion for Relief from Judgment . . . of Sept 21, 2014, Goldberg, Judge at 13-5542 of the District Court [for the

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Eastern District of Pennsylvania] . . . at paper #34 of the district court docket”¹ He seeks an order from this Court “remanding” the matter to the District Court, and directing the District Court Clerk to enter default against the defendants in the underlying action.

A writ of mandamus is a drastic remedy available only in extraordinary circumstances, where the petitioner has no other adequate means to attain the relief sought. See In re Diet Drugs Prods. Liab. Litig., 418 F.3d 372, 378–79 (3d Cir. 2005). It may not be used as a substitute for appeal. Id. (citing Cheney v. U.S. Dist. Ct. for Dist. of Columbia, 542 U.S. 367, 380–81, 124 S. Ct. 2576, 159 L. Ed. 2d 459 (2004)). Petitioner has already filed an appeal from the District Court’s July 21, 2014 order in the underlying action, seeking substantially the same relief that he seeks in his mandamus petition. That appeal is pending. See Johnson v. Rardin, C.A. No. 14-3398 (filed July 23, 2014).

Accordingly, we will deny the petition. Petitioner’s motion for appointment of counsel is denied.

¹ Docket #34 in E.D. Pa. Civ. No. 13-cv-05542 is dated July 21, 2014, not September 21, 2014. Nothing has been entered on that docket since July 29, 2014.