

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

In re Belt

450 F. App'x 157 (3d Cir. 2011) · Decided November 8, 2011

SUMMARY

The Third Circuit denied Tariq Belt's petition for a writ of mandamus challenging the outcomes of three Middle District of Pennsylvania cases involving prison disciplinary proceedings and confinement. The court held that mandamus was inappropriate because Belt had an adequate alternative remedy through appeal and had not shown a clear and indisputable right to relief; it also declined to revisit an earlier ruling concerning the district court clerk's designation of his filings.

CASE DETAILS

COURT	United States Court of Appeals for the Third Circuit
WRITING FOR THE COURT	Fuentes; Greenaway; Stapleton
JURISDICTION	Federal
DECIDED	November 8, 2011
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Tariq Belt petitioned the Third Circuit for a writ of mandamus challenging the adjudication of three cases in the United States District Court for the Middle District of Pennsylvania. The court denied the petition and denied Belt's challenge to a Clerk's Office non-compliance order.
STANDARD OF REVIEW	Mandamus is an extraordinary remedy available only when the petitioner has no other adequate means to obtain the requested relief and has a clear and indisputable right to the writ.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Tariq Belt

TOPICS

[writ of certiorari](#) [appellate procedure](#) [civil procedure](#) [prisoners rights](#) [civil rights](#)

PRACTICE AREAS

[Civil procedure](#) [Appellate procedure](#) [Civil rights](#) [Prisoner litigation](#)

QUESTIONS PRESENTED

1. Whether mandamus was available to challenge the outcomes of three District Court cases after Belt failed to pursue ordinary appeals.
2. Whether Belt was entitled to mandamus based on his allegation that the District Court Clerk's Office improperly designated or amended his filings.

HOLDINGS

1. Mandamus was unavailable because Belt had an adequate alternative remedy—ordinary appeal—and mandamus cannot substitute for an appeal merely because the time for filing an appeal had expired.
2. Belt was not entitled to mandamus concerning the Clerk's Office because he had not shown a clear and indisputable right to the writ, and the court would not disturb its prior decision rejecting the same allegation as frivolous.

KEY QUOTATIONS

“A writ of mandamus is an extraordinary remedy.” (450 F. App'x at 158)

“Significantly, mandamus is not a substitute for an appeal; if a petitioner can obtain relief by an ordinary appeal, a court will not issue the writ.” (450 F. App'x at 158)

“Mandamus relief is not appropriate, however, merely because a petitioner “allowed the time for an appeal to expire.”” (450 F. App'x at 158)

FACTUAL BACKGROUND

Belt filed two federal habeas petitions challenging separate prison disciplinary proceedings and the resulting loss of good-conduct time or alleged due-process violations. He also filed a civil-rights action alleging that his confinement was unlawful. The District Court denied relief in all three cases, and Belt allowed the time for ordinary appeals to expire before seeking mandamus.

PROCEDURAL HISTORY

Belt filed two petitions under 28 U.S.C. § 2241 challenging prison disciplinary proceedings and a civil-rights action alleging unlawful confinement in the Middle District of Pennsylvania. The District Court denied relief in all three matters, and Belt did not appeal. He then sought mandamus in the Third Circuit, asserting that the District Court had acted extra-judicially and requesting that the underlying actions be voided. The Third Circuit denied mandamus, granted in forma pauperis status, and denied his challenge to a Clerk's Office non-compliance order.

DISPOSITION

writ_denied

CASES CITED

- In re Pasquariello, 16 F.3d 525, 528 (3d Cir. 1994)
- Kerr v. United States District Court, 426 U.S. 394, 403 (1976)
- Helstoski v. Meanor, 442 U.S. 500, 506 (1979)
- Oracare DPO, Inc. v. Merin, 972 F.2d 519, 523 (3d Cir. 1992)
- In re Tariq Belt, 426 F. App'x 119 (3d Cir. 2011)

OPINION

PER CURIAM.

*158OPINION PER CURIAM. Tariq Belt has filed a petition for a writ of mandamus in which he appears to complain about the adjudication of three cases that he filed in the United States District Court for the Middle District of Pennsylvania.

For the following reasons, we will deny the petition. In August 2010, Belt filed a petition pursuant to 28 U.S.C. § 2241, challenging a prison disciplinary proceeding at which he was found guilty of accepting money from another inmate and was sanctioned with the loss of good conduct time. *Belt v. U.S. Justice Dep't*, M.D. Pa. Civ. No. 10-cv-1652. Then, in November 2010, Belt filed a similar petition, arguing that his due process rights were violated in a disciplinary proceeding which involved a charge of demanding or receiving money or anything of value in return for protection against others.

Belt v. U.S. Federal Gov't, M.D. Pa. Civ. No. 10-cv-2339. Belt filed a civil rights action in December 2010, alleging that his confinement was unlawful. *Belt v. Bureau of Prisons*, M.D. Pa. Civ. No. 10-ev-2642. The District Court denied relief in all three cases and Belt did not appeal.

In his mandamus petition, Belt claims that the District Court in those cases “acted extra-judicially” and he requests a “pronounce[ment] that [he] ha[s] the right to the voiding of all those actions initiated... under [his] name.”¹ Essentially, it appears that Belt is attempting to challenge the outcomes in the underlying District Court cases. A writ of mandamus is an extraordinary remedy.

In *re Pasquariello*, 16 F.3d 525, 528 (3d Cir.1994). The petitioner must have no other adequate means to obtain the relief desired and the petitioner must show a “clear and indisputable” right to the writ. See *Kerr v. United States District Court*, 426 U.S. 394, 403, 96 S.Ct. 2119, 48 L.Ed.2d 725 (1976). Significantly, mandamus is not a substitute for an appeal; if a petitioner can obtain relief by an ordinary appeal, a court will not issue the writ.

Helstoski v. Meanor, 442 U.S. 500, 506, 99 S.Ct. 2445, 61 L.Ed.2d 30 (1979). Here, Belt had alternate means to challenge the District Court’s decisions. In particular, he could have filed notices of appeal. See 28 U.S.C. § 1291.

We note that the time for filing appeals from those rulings is governed by the 60-day limit set forth in Fed. R.App. P. 4(a)(1)(B). Belt filed the present mandamus petition well more than 60 days

after the District Court denied relief in the cases identified above. Mandamus relief is not appropriate, however, merely because a petitioner “allowed the time for an appeal to expire.” *Oracare DPO, Inc. v. Merin*, 972 F.2d 519, 523 (3d Cir.1992).

Accordingly, the petition for a writ of mandamus is denied.² Belt also complains about the way the District Court Clerk’s Office designated his filings. Mandamus Petition, 2 (“No matter what I designated my filings as Clerk or Office of Clerk amended directly or indirectly my filings into that which I did not label them....”). This allegation was the subject of a mandamus petition filed by Belt in February 2011.

The Court denied the petition, holding, *inter alia*, that “Belt’s assertion of error on the part of the Clerk’s Office is frivolous and he thus has not shown a clear and indisputable right to the writ.” *In re Tariq Belt*, 426 Fed.Appx. 119 (3d Cir.2011).

We will not disturb that decision.. Belt's motion to proceed in forma pauperis is granted, but his challenge to the Clerk’s *159September 6, 2011, non-compliance order is denied.