

"Appendix C"

DLD-059

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 23-2918

THOMAS WATERS, Appellant

v.

FEDERAL BUREAU OF PRISONS; ET AL.

(M.D. Pa. Civ. No. 1:23-cv-01018)

Present: JORDAN, PORTER, and PHIPPS, Circuit Judges

Submitted are:

(1) By the Clerk for possible dismissal due to a jurisdictional defect;

(2) By the Clerk for a determination under 28 U.S.C. § 1915(e)(2) or for summary action under Third Circuit L.A.R. 27.4 and I.O.P. 10.6;

(3) Appellant's brief in support of the appeal;

(4) Appellant's argument in support of the appeal; and

(5) Appellant's jurisdictional response

in the above-captioned case.

Respectfully,

Clerk

ORDER

Thomas Waters filed a pro se civil rights complaint alleging mistreatment by prison officials. Soon after, Waters filed two motions to amend his pleading and three motions to proceed in forma pauperis (IFP). The District Court entered an order granting one of the IFP motions and denying the other two as moot. In the same order, the District Court granted the later of the two motions to amend, and denied the earlier one as moot. The District Court directed Waters to file his second amended complaint, and furnished

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him with the form (USM-285) used to enlist the U.S. Marshals Service for effecting service of process. Waters then filed a motion for reconsideration, which the District Court granted in part—insofar as Waters requested copies of certain docket entries and extra time to file the new pleading—and denied in part (as moot) to the extent Waters raised an issue about his first, superseded motion to amend. In the weeks that followed, Waters filed a second amended complaint, several motions, and a notice of appeal. The motions are pending, and there is no proof on the docket of completed service. The action below is, by any account, ongoing. As for this appeal, Waters was notified that it appears to be jurisdictionally defective, principally because there is no “final” and immediately appealable order under 28 U.S.C. § 1291. A decision is “final” under § 1291 if it “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” S.B. v. KinderCare Learning Ctrs., LLC, 815 F.3d 150, 152 (3d Cir. 2016) (citation omitted). “Conversely, if the order specifically contemplates further activity by the District Court, it is not considered final.” WRS. Inc. v. Plaza Entm’t, Inc., 402 F.3d 424, 427 (3d Cir. 2005) (citation omitted). There is, as of yet, no “final” order in this case. See, e.g., Van Dusen v. Swift Transp. Co., 830 F.3d 893, 897 (9th Cir. 2016); In re Recticel Foam Corp., 859 F.2d 1000, 1002-05 (1st Cir. 1988). Further, it is unclear how Waters may have been aggrieved by any District Court action. Cf. In re Glenn W. Turner Enters. Litig., 521 F.2d 775, 781 (3d Cir. 1975). We thus lack appellate jurisdiction and the appeal is, as a result, dismissed. In light of that disposition, we do not consider whether to dismiss the appeal under 28 U.S.C. § 1915 or take summary action pursuant to our local rules and procedures.

By the Court,

s/ Kent A. Jordan
Circuit Judge

Dated: February 8, 2024

kr/cc: Thomas Waters
All Counsel of Record



A True Copy:

Patricia S. Dodszeit

Patricia S. Dodszeit, Clerk
Certified Order Issued in Lieu of Mandate

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 23-2918

THOMAS WATERS, Appellant

v.

FEDERAL BUREAU OF PRISONS; ET AL.

(M.D. Pa. Civ. No. 1:23-cv-01018)

SUR PETITION FOR PANEL REHEARING

Before: JORDAN, PORTER, and PHIPPS, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court, it is hereby ORDERED that the petition for rehearing by the panel is denied.

BY THE COURT,

s/ Kent A. Jordan
Circuit Judge

Dated: March 8, 2024

kr/cc: Thomas Waters
Patrick J. Bannon, Esq.
Carlo D. Marchioli, Esq.

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

THOMAS WATERS,
Plaintiff

v.

FEDERAL BUREAU OF PRISONS, et al.,
Defendants

No. 1:23-cv-01018

(Judge Kane)

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On June 21, 2023, Plaintiff Thomas Waters ("Plaintiff") commenced the above-captioned action by filing an original complaint pursuant to 42 U.S.C. § 1983 ("Section 1983") and Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971) (Doc. No. 1), and by filing various motions seeking leave to proceed in forma pauperis (Doc. Nos. 4, 9, 13). After Plaintiff filed his original complaint, he filed a motion to amend (Doc. No. 7), as well as an amended complaint (Doc. No. 8). Plaintiff also filed a subsequent motion to amend his amended complaint. (Doc. No. 15.)

On August 15, 2023, the Court, inter alia, granted Plaintiff leave to proceed in forma pauperis, deemed his amended complaint filed, and granted his motion to amend his amended complaint. (Doc. No. 17.) The Court directed the Clerk of Court to mail Plaintiff a civil rights complaint form and instructed Plaintiff to file his second amended complaint within thirty (30) days. (Id.) In addition, the Court denied, as moot, Plaintiff's motion to amend his original complaint. (Id.)?

In response to the Court's August 15, 2023 Order, Plaintiff filed a motion seeking various types of relief. (Doc. No. 18.) More specifically, Plaintiff requests that the Court: (a) reconsider its decision to deny, as moot, his motion to amend his original complaint; (b) send him a copy of

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his amended complaint so that he can appropriately file his second amended complaint; (c) grant him additional time in which to file his second amended complaint; and (d) send him copies of his motions for leave to proceed in forma pauperis that were denied, as moot, by the Court. (Id.)

AND SO, on this 1st day of September 2023, based upon the foregoing, **IT IS ORDERED THAT** Plaintiff's motion (Doc. No. 18) is **GRANTED in part** and **DENIED in part** as follows:

1. Plaintiff's motion for reconsideration of the Court's Order denying, as moot, his motion to amend his original complaint (Doc. No. 18) is **DENIED**. The Court stands by its ruling that Plaintiff's motion to amend his original complaint was rendered moot when the Court deemed Plaintiff's amended complaint filed and granted Plaintiff's motion to amend his amended complaint. Additionally, the Court notes that Plaintiff has not shown "(1) an intervening change in controlling law[,] (2) the availability of new evidence[,] or (3) the need to correct clear error of law or prevent manifest injustice[.]" as required by the standard governing a motion for reconsideration under Rule 59(e) of the Federal Rules of Civil Procedure. See Lazaridis v. Wehmer, 591 F.3d 666, 669 (3d Cir. 2010) (citing N. River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995));
2. Plaintiff's motion seeking copies of his amended complaint and his motions for leave to proceed in forma pauperis that were denied, as moot, by the Court (Doc. No. 18) is **GRANTED**. The Clerk of Court is directed to **SEND** Plaintiff copies of the following entries on the Court's docket: Doc. Nos. 4, 8, and 13. Plaintiff is notified, however, that these are courtesy copies. The Clerk of Court is directed to **SEND** Plaintiff a letter concerning the fees associated with requests for copies of filings; and
3. Plaintiff's motion seeking an extension of time to file his second amended complaint (Doc. No. 18) is **GRANTED**, and Plaintiff shall file his second amended complaint on or before October 2, 2023.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania