

W.D.N.Y.
23-cv-1307
Vilardo, J.

United States Court of Appeals

FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of October, two thousand twenty-four.

Present:

Pierre N. Leval,
Denny Chin,
Raymond J. Lohier, Jr.,
Circuit Judges.

David C. Lettieri,

Petitioner-Appellant,

v.

24-704

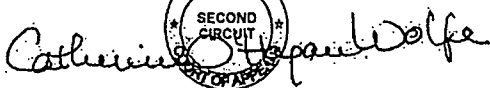

Paul E. Bonanno,

Respondent-Appellee.

Appellant, proceeding pro se, moves for in forma pauperis status and to “grant [the] writ.” Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see* 28 U.S.C. § 1915(e).

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court

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| 01/30/2024 | <p data-bbox="296 92 1485 197">3 TEXT ORDER GRANTING <u>2</u> motion to proceed <i>in forma pauperis</i> ("IFP") and DISMISSING this action without prejudice to filing a civil complaint based on the facts asserted in the petition.</p> <p data-bbox="344 233 1485 373">The <i>pro se</i> petitioner, David C. Lettieri, is currently confined at the Niagara County Jail. He has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, Docket Item <u>1</u> , and has moved for permission to proceed IFP. Docket Item <u>2</u> . Lettieri's motion to proceed IFP is granted.</p> <p data-bbox="344 409 1485 657">A habeas corpus petition brought under section 2241 "generally challenges the <i>execution</i> of a federal prisoner's sentence." <i>Jiminian v. Nash</i>, 245 F.3d 144, 146 (2d Cir. 2001) (emphasis in original). Although a narrow category of claims regarding prison conditions may be asserted in a section 2241 petition, <i>see Thompson v. Choinski</i>, 525 F.3d 205 (2d Cir. 2008), Lettieri does not assert any such claims here. Rather, he complains that the government violated his Fourth Amendment rights when it searched his home. Docket Item <u>1</u> at 9-10.</p> <p data-bbox="344 693 1485 1087">Lettieri has filed more than 70 petitions and civil actions in this District since November 2022, <i>see In re: David C. Lettieri</i>, Case No. 23-mc-32, Docket Item 18 (W.D.N.Y. Jan. 19, 2024), and has been barred from proceeding IFP under the "three strikes rule," <i>id.</i>; <i>see</i> 28 U.S.C. § 1915(g) (providing that a prisoner may not bring a "civil action or appeal" IFP if the prisoner has, "on 3 or more prior occasions," brought an action "that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted," unless he is "under imminent danger of serious physical injury"). But the three strikes rule does not apply to habeas petitions. <i>See Adams v. McGinnis</i>, 317 F. Supp. 2d 243, 245 n.1 (W.D.N.Y. 2004) (noting that the Prisoner Litigation Reform Act of 1996, which includes the three strikes rule, does not apply to habeas petitions).</p> <p data-bbox="344 1123 1485 1333">Since the Court began entering three strikes orders, Lettieri has filed several petitions under section 2241. <i>See, e.g., Lettieri v. Kobrin</i>, Case No. 23-cv-1156, Docket Item 5 (W.D.N.Y. Dec. 14, 2023) (dismissing petition without prejudice to filing a new action under 42 U.S.C. § 1983). Lettieri's abusive litigation history, coupled with his shift to habeas petitions once three strikes orders began, strongly suggests that he filed this petition under section 2241 to avoid the three strikes bar.</p> <p data-bbox="344 1369 1485 1579">Regardless, because Lettieri is not challenging the execution of his sentence or the fact of his confinement, he is not entitled to relief under section 2241. The petition therefore is dismissed without prejudice to filing a civil complaint, and the Clerk of the Court shall close this action. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this judgment would not be taken in good faith and therefore denies leave to appeal as a poor person. <i>Coppedge v. United States</i>, 369 U.S. 438, 444-45 (1962).</p> <p data-bbox="344 1614 1485 1650">SO ORDERED. Issued by Hon. Lawrence J. Vilardo on 1/30/2024. (DJ)</p> <p data-bbox="344 1686 1485 1717">Clerk to Follow up by mailing a copy of this order to the petitioner. (Entered: 01/30/2024)</p> |
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Judgment in a Civil Case

United States District Court
WESTERN DISTRICT OF NEW YORK

DAVID C. LETTIERI

JUDGMENT IN A CIVIL CASE
CASE NUMBER: 23-CV-1307

v.

PAUL E. BONANRO

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED: that the Petition for Writ of Habeas Corpus is Dismissed without prejudice to filing a civil complaint, and the Court certifies that any appeal would not be taken in good faith and, therefore leave to appeal to the Court of Appeals as a poor person is denied.

Date: January 30, 2024

MARY C. LOEWENGUTH
CLERK OF COURT

By: s/ Jennifer V.
Deputy Clerk