

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-3124

RONALD E. SANFORD,

Appellant

v.

WARDEN JOHN NASH

On Appeal From the United States District Court
For the District of New Jersey
(D.N.J. Civ. No. 05-cv-2396)
District Judge: Honorable Jerome B. Simandle

Submitted for Possible Summary Action under
Third Circuit LAR 27.4 and I.O.P. 10.6
September 9, 2005

Before: ROTH, BARRY AND SMITH, CIRCUIT JUDGES

(Filed April 10, 2006)

OPINION

PER CURIAM:

Ronald Sanford appeals the District Court's order dismissing his petition filed pursuant to 28 U.S.C. § 2241. In his petition, Sanford alleged that the 123-month sentence imposed following his guilty plea for arson and mail fraud is invalid under United States v. Booker, 125 S.Ct. 738 (2005). The District Court dismissed the petition for lack of jurisdiction. Sanford filed a timely notice of appeal, and we have jurisdiction under 28 U.S.C. § 1291.

Our review of the District Court's decision is de novo. United States v. Cleary, 46 F.3d 307, 309-10 (3d Cir. 1995). Sanford's § 2241 petition may not be entertained unless a motion under § 2255 is "inadequate or ineffective to test the legality of his detention." 28 U.S.C. § 2255. Sanford argued that his case falls within the exception set forth in In re Dorsainvil, 119 F.3d 245, 251 (3d Cir. 1997). However, unlike the situation in In re Dorsainvil, the decision in Booker did not decriminalize the conduct for which Sanford was convicted. See Okereke v. United States, 307 F.3d 117, 120-21 (3d Cir. 2002). We agree with the District Court that it lacked jurisdiction over Sanford's § 2241 petition. See also Padilla v. United States, 416 F.3d 424 (5th Cir. 2005).

Summary action is appropriate if there is no substantial question presented in the appeal. See Third Circuit LAR 27.4. For the above reasons, as well as those set forth by the District Court, we will summarily affirm the District Court's order. See Third Circuit I.O.P. 10.6.