

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 06-1076

STEVEN LEATH,
Appellant

v.

Warden RONNIE L. HOLT

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civ. No. 05-cv-02349)
District Judge: Honorable A. Richard Caputo

Submitted For Possible Dismissal Under 28 U.S.C. § 1915(e)(2)(B)
August 17, 2006

Before: SLOVITER, McKEE, AND FISHER, CIRCUIT JUDGES

(Filed: September 13, 2006)

OPINION

PER CURIAM

In 1994 Steven Leath was convicted by the United States District Court for the Eastern District of Pennsylvania of conspiracy to distribute, and distributing, crack cocaine and sentenced to life imprisonment; we affirmed the following year. He then sought modification of his sentence pursuant to 18 U.S.C. § 3582 and challenged his

conviction under 28 U.S.C. § 2255, failing each time (however, a subsequent § 3582 motion was granted in part). He later filed a mandamus petition and sought authorization from this Court to file another section 2255 motion, again without success.

Undeterred, in 2005 Leath filed a habeas corpus petition in the United States District Court for the Middle District of Pennsylvania pursuant to 28 U.S.C. § 2241, arguing in essence that his sentence is unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000), and United States v. Booker, 543 U.S. 220 (2005). The District Court dismissed the petition because such claims must be brought via § 2255 in the court where he was convicted unless § 2255 is “inadequate or ineffective;” and § 2255 is not rendered “inadequate or ineffective” by the petitioner’s mere inability to meet the criteria for filing a second or successive § 2255 motion.

We agree with the District Court. Leath’s claims clearly fall outside the narrow range of situations in which § 2255 is “inadequate or ineffective,” for the reasons set forth in In re Dorsainvil, 119 F.3d 245 (3d Cir. 1997), and Okereke v. United States, 307 F.3d 117 (3d Cir. 2002). Accordingly, the appeal is without legal merit and we will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).