

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-4371

HERNAN MORENO,
Appellant

v.

UNITED STATES OF AMERICA

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 07-cv-01225)
District Judge: Honorable James F. McClure, Jr.

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B)
or Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
April 28, 2011

Before: BARRY, FISHER and ROTH, Circuit Judges.

(Filed: July 21, 2011)

OPINION

PER CURIAM

Hernan Moreno, a federal prisoner, filed an action alleging that he was entitled to relief under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2674, due to the United States’ alleged mishandling of his medical care. The District Court granted summary

judgment in favor of the United States. We affirmed the judgment on appeal, agreeing with the District Court that Moreno's claim was barred by the FTCA's independent contractor exemption. See Moreno v. United States, 387 F. App'x 159 (3d Cir. 2010).

After our mandate issued, Moreno returned to the District Court. He filed a motion captioned "certificate of appealability forma pauperis status." In the filing, he asked for permission to again challenge the District Court's decision granting summary judgment. He stated that he wanted to file a certificate of merit and to obtain an expert witness. He also contended that his claim was meritorious. The District Court denied Moreno's motion. In doing so, the District Court provided Moreno with an overview of the proceedings in his case and explained that the case was closed. The District Court also noted for Moreno's information that the certificate-of-merit issue was moot based on our ruling.

Moreno filed a notice of appeal in which he disputed the application of the independent contractor exemption and stated that the District Court acted "beyond it's [sic] discretion" in concluding that the certificate-of-merit issue was moot. Moreno also filed a motion for reconsideration and remand based on his renewed arguments that the District Court erred in granting summary judgment in favor of the United States.

We have jurisdiction over this appeal under 28 U.S.C. § 1291. Upon review, we will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) because it does not have an arguable basis in fact or law. See Neitzke v. Williams, 490 U.S. 319, 325 (1989).

The District Court committed no error by explaining to Moreno that our mandate had issued and that his case was closed. Moreno was not entitled to relief on his claims in the District Court. Also, despite Moreno's contention to the contrary, the District Court did not abuse its discretion or act beyond its jurisdiction by pointing out that we had ruled that the certificate-of-merit issue was irrelevant in light of our conclusion that Moreno's claims were barred by the FTCA's independent contractor exemption. For these reasons, this appeal will be dismissed. We also deny Moreno's motion for reconsideration and remand.