

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 11-3880

IN RE: ANTHONY LIONETTI,
Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the District of New Jersey
(Related to Civ. No. 10-cv-4720)

Submitted Pursuant to Rule 21, Fed. R. App. P.
November 3, 2011
Before: Chief Judge MCKEE, ALDISERT and GARTH, Circuit Judges

(Opinion filed: January 27, 2012)

OPINION

PER CURIAM

On October 26, 2011, Anthony Lionetti filed a petition for a writ of mandamus seeking an order directing the District Court to act on his motion filed pursuant to 28 U.S.C. § 2255. On November 18, 2011, the District Court denied Lionetti's § 2255 motion. Thus, his request for an order directing the District Court to act on his motion is now moot.

Lionetti also requests the recusal of the District Court Judge. While mandamus is available to review a District Court's refusal to recuse pursuant to 28 U.S.C. § 455(a),¹ see Alexander v. Primerica Holdings, Inc., 10 F.3d 155, 163 (3d Cir. 1993), Lionetti did not move for recusal in the District Court. Thus, he is not entitled to mandamus relief on that ground.

For the above reasons, the mandamus petition will be denied

¹ Section 455(a) provides that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."