

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 13-3041

UNITED STATES OF AMERICA

v.

DIODAYAN LEDESMA-CUESTA,

Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Criminal No. 2:01-cr-00374-001)
District Judge: Honorable Stewart Dalzell

Submitted for Possible Summary Action
Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
August 1, 2013

Before: FUENTES, FISHER and VANASKIE, Circuit Judges

(Opinion filed: August 15, 2013)

OPINION

PER CURIAM

Diodayan Ledesma-Cuesta appeals an order denying his 28 U.S.C. § 1651 petition. We have jurisdiction pursuant to 28 U.S.C. § 1291. Having dealt with near-identical appeals from Ledesma-Cuesta in the recent past, we will summary affirm for substantially the same reasons discussed in our August 2012 opinion. See United States

v. Ledesma-Cuesta, 476 F. App'x 412, 412 (3d Cir. 2012) (nonprecedential per curiam); see also 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6. To the extent that Ledesma-Cuesta relies on Kessack v. United States, No. C05-1828Z, 2008 U.S. Dist. LEXIS 7739 (W.D. Wash. Jan. 18, 2008), we have previously declined to follow that case, and the Ninth Circuit has explicitly rejected its outcome. See United States v. Gamboa, 608 F.3d 492, 495 (9th Cir. 2010) (explaining that Kessack is “contrary to the law of [the Ninth] Circuit”); Massey v. United States, 581 F.3d 172, 174 n.2 (3d Cir. 2009) (per curiam).