

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-2459

IN RE: ROLLIN LEE LAUB,
Petitioner

On Petition for Writ of Mandamus from the
United States District Court for the District of Delaware
(D.C. Civ. No. 01-78-cv-00014)

Submitted Under Rule 21, Fed. R. App. P.
May 30, 2008

Before: SCIRICA, Chief Judge, ALDISERT and GARTH, Circuit Judges

(Filed: June 25, 2008)

OPINION OF THE COURT

PER CURIAM.

Rollin Lee Laub is a state prisoner currently incarcerated in Delaware. On March 19, 2008 Laub filed a motion pursuant to Federal Rule of Civil Procedure 60(b)(4) seeking relief from the District Court's March 16, 2006 Order.¹ Laub originally filed a

¹ The order granted the State of Delaware's Motion For Relief From Consent Decree. The Consent Decree, entered on October 4, 1982, stemmed from a class action law suit relating to prison conditions and disciplinary procedures at the Delaware Correctional Center.

petition for a writ of mandamus requesting that this Court compel the District Court to rule on his motion. On May 28 the District Court order defendants to respond to Laub's 60(b)(4) motion and defendants filed a response on June 7. Because Laub has now received the relief he sought in filing his mandamus petition – action on his motion by the District Court – we will deny his mandamus petition as moot.² Laub, in his latest filing, requests that we vacate the District Court's March 16 order. Such a request is not proper for a mandamus petition. See In re Chambers Dev. Co. 148 F.3d 214, 226 (“mandamus is not a substitute for appeal and a writ of mandamus will not be granted if relief can be obtained by way of our appellate jurisdiction.”)

Accordingly, we will deny the mandamus petition as moot.

² Laub also maintains that the District Court lacked jurisdiction to act while his mandamus petition was pending. We are aware of no authority that supports this contention.