

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-3142

IN RE: YAW AMPONSAH,
Petitioner

On a Petition for Writ of Mandamus
from the United States District Court
for the District of New Jersey
(Related to Civ. No. 08-00114)

Submitted Pursuant to Rule 21, Fed. R. App. P.
August 29, 2008

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

(Filed: September 17, 2008)

OPINION OF THE COURT

PER CURIAM.

Petitioner Yaw Amponsah, a federal prisoner proceeding pro se, filed this mandamus petition pursuant to 28 U.S.C. § 1651, seeking an order directing the U.S. District Court for District of New Jersey to rule on his motion to vacate, set aside or correct his sentence under 28 U.S.C. § 2255. For the foregoing reasons, we will deny the petition.

Amponsah filed a motion under § 2255 on January 9, 2008, in the United States District Court for the District of New Jersey. The District Court subsequently advised Amponsah of his rights under United States v. Miller, 197 F.3d 644 (3d Cir. 1999). On April 24, 2008, the District Court directed the government to respond to Amponsah's motion within 45 days. The District Court also instructed Amponsah not to file any additional motions or papers other than a reply to the government's answer. On July 3, 2008, counsel for the government entered an appearance and filed an answer.

On July 10, 2008, apparently having not yet received the government's answer, Amponsah filed this petition seeking an order directing the District Court to hear and decide his motion in light of the government's failure to respond within 45 days. As the government has responded to Amponsah's motion, and the proceedings in the District Court continue apace, Amponsah's concern has been addressed.¹

Amponsah also requests that his § 2255 motion be assigned to a different judge based on the District Judge's purported lack of impartiality, or the appearance thereof. As Amponsah has not filed a motion requesting the District Judge's recusal, he has not demonstrated that his right to mandamus is "clear and indisputable." Allied Chem. Corp.

¹To the extent that Amponsah takes issue with the government's answer having been filed outside the 45 days ordered by the District Court, we note that the District Court has discretion over the management of its docket, In re Fine Paper Antitrust Litig., 685 F.2d 810, 817 (3d Cir. 1982), and that the District Court has the discretion to decide what, if any, significance to afford the government's minor delay in responding.

v. Daiflon, Inc., 449 U.S. 33, 35 (1980) (quoting Bankers Life & Cas. Co. v. Holland, 346 U.S. 379, 384 (1953) (quoting United States v. Duell, 172 U.S. 576, 582 (1899))).

Accordingly, we will deny Amponsah's mandamus petition.