

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-3055

IN RE: CALEB L. MCGILLVARY,
Petitioner

On Petition for Writ of Mandamus from the
United States District Court for the District of New Jersey
(Related to D.C. No. 1-22-cv-04185)

Submitted Pursuant to Rule 21, Fed. R. App. P.
on December 7, 2023

Before: BIBAS, MATEY, and CHUNG, Circuit Judges

(Opinion filed: December 20, 2023)

OPINION*

PER CURIAM

On June 22, 2022, Caleb L. McGillvary filed a petition with the District Court for a writ of habeas corpus under 28 U.S.C. § 2254. On November 20, 2023, McGillvary filed the instant petition for a writ of mandamus in which he asks this Court to order the District Court to file, and then rule on, his motion to withdraw his in forma pauperis (“IFP”) application. He states that he submitted this motion to the District Court on May 23, 2023. A motion to withdraw an IFP application does not appear on the docket, but the issue has been resolved through the payment of the filing fee.

We note that we already addressed this issue when we ruled on two other mandamus petitions filed by McGillvary. See In re: Caleb L. McGillvary, Nos. 23-2660 & 23-2820, 2023 WL 8229975, at *1 (3d Cir. Nov. 28, 2023). As we explained there, McGillvary’s complaint regarding his motion to withdraw his IFP application is better directed to the District Court. See generally Madden v. Myers, 102 F.3d 74, 79 (3d Cir. 1996). We are confident that the District Court, upon receiving notice of the issue, will address it in due course. We reach the same conclusion here.

Accordingly, we will deny McGillvary’s petition for a writ of mandamus.

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.