

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-1129

IN RE: CALEB L. MCGILLVARY,
Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the District of New Jersey
(Related to 1:22-cv-04185)

Submitted Pursuant to Rule 21, Fed. R. App. P.

Before: CHAGARES, Chief Judge, SHWARTZ and RESTREPO, Circuit Judges

(Opinion filed: August 23, 2024)

OPINION*

PER CURIAM

On January 19, 2024, Caleb McGillvary filed a pro se petition for a writ of mandamus challenging the District Court's indefinite administrative closure of his otherwise ripe habeas petition.¹ In his mandamus petition, as well as a supplemental

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

¹ McGillvary's federal habeas petition was filed in June 2022 and was ripe for disposition in May 2023. In August 2023, the petition was reassigned to District Judge Christine O'Hearn. In November 2023, McGillvary filed a separate civil action in which he named

petition, see 3d Cir. ECF No. 8, and numerous other filings in this Court, McGillvary seeks the recusal of Judge O’Hearn from the habeas matter and reassignment of the case to another district judge. He also seeks the prioritization and prompt resolution of his habeas petition.

We will deny the petition for a writ of mandamus. First, to the extent that McGillvary seeks the recusal of Judge O’Hearn and reassignment of his habeas petition, an Order filed on July 26, 2024, reassigned the pending habeas petition, pursuant to 28 U.S.C. § 292(b), to a district judge outside the District of New Jersey. Accordingly, his request for such relief is moot. See Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 698-99 (3d Cir. 1996) (“If developments occur during the course of adjudication that ... prevent a court from being able to grant the requested relief, the case must be dismissed as moot.”).

Second, a writ of mandamus will issue only in extraordinary circumstances. See Sporck v. Peil, 759 F.2d 312, 314 (3d Cir. 1985). As a precondition to the issuance of the writ, the petitioner must establish that there is no alternative remedy or other adequate means to obtain the desired relief, and the petitioner must demonstrate a clear and indisputable right to the relief sought. Kerr v. U.S. Dist. Court, 426 U.S. 394, 403 (1976). As a general rule, the manner in which a court disposes of cases on its docket is

multiple federal judges and others, including Judge O’Hearn, as defendants. McGillvary then moved to recuse Judge O’Hearn from presiding over his habeas petition based on her status as a defendant in the separate civil action. See D.Ct. ECF No. 32. On January 9, 2024, rather than ruling on the recusal motion, Judge O’Hearn sua sponte administratively terminated McGillvary’s ripe habeas action “pending resolution of” the separate civil action. D.Ct. ECF No. 36 at 1-2.

within its discretion. See In re Fine Paper Antitrust Litig., 685 F.2d 810, 817 (3d Cir. 1982). Nonetheless, mandamus may be warranted where a District Court’s “delay is tantamount to a failure to exercise jurisdiction.” Madden v. Myers, 102 F.3d 74, 79 (3d Cir. 1996).

Here, while we recognize that McGillvary has faced a delay in the resolution of his pending habeas matter, his petition has been newly reassigned for disposition. We are confident that the newly assigned district judge will act on McGillvary’s petition within a reasonable time. Accordingly, we will deny the mandamus petition without prejudice to refiling if the petition is not decided within a reasonable time.²

² In light of our disposition, McGillvary’s pending motions, see 3d Cir. ECF Nos. 5, 6, 7, 9, 10, as well as any other pending requests, are denied.