

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-3957

IN RE: FREDERICK H. BANKS,
Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the Western District of Pennsylvania
(Related to Crim. No. 2:15-cv-00168)

Submitted Pursuant to Rule 21, Fed. R. App. P.
February 20, 2020

Before: MCKEE, SHWARTZ and PHIPPS, Circuit Judges

(Opinion filed: May 4, 2020)

OPINION*

PER CURIAM

Following a jury trial in November 2019, Frederick Banks was found guilty of wire fraud, 18 U.S.C. § 2661(a)(2), and aggravated identity theft, 18 U.S.C. § 1028A(a)(1). Sentencing is scheduled for April 17, 2020.

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

Meanwhile, in December 2019, Banks filed a mandamus petition in this Court seeking to compel the Government to “disclose the FISA electronic surveillance on [him].” Banks is convinced that “for a decade the government has had a FISA warrant on him.” As evidence of the surveillance, he states that he “has a high-pitched tone coming in each ear,” which “has been present since 2011” and which “is a wireless signal sent via satellite by the government.” Banks’ mandamus petition also seeks to compel the Government to “transfer [him] to a halfway house.” In support of that request, Banks claims that he has been “confined for well over 52 months, which exceeds the maximum possible sentence” that he will receive for his recent convictions. He also asserts that he “has been held in solitary confinement at the Allegheny County Jail under conditions that violate Bell v. Wolfish,” 441 U.S. 520 (1979).

A writ of mandamus is a drastic remedy available in only extraordinary circumstances. In re Diet Drugs Prods. Liab. Litig., 418 F.3d 372, 378 (3d Cir. 2005). Mandamus is a means “to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.” Id. (quoting In re Patenaude, 210 F.3d 135, 140 (3d Cir. 2000)). To demonstrate that mandamus is appropriate, a petitioner must establish that he has a “clear and indisputable” right to the issuance of the writ and that he has “no other adequate means” to obtain the relief desired. Madden v. Myers, 102 F.3d 74, 79 (3d Cir. 1996).

Relief is not warranted here. Banks’ allegations of electronic surveillance are totally unfounded. Indeed, there is simply no evidence that the high-pitched tones that

Banks claims to hear are the result of electronic surveillance.¹ Mandamus relief is also not available on Banks' request for a transfer to a halfway house. Banks does not have a right to choose his particular place of confinement, see Olim v. Wakinekona, 461 U.S. 238, 245-46 (1983), and challenges to conditions of confinement can be brought in an action pursuant to 42 U.S.C. § 1983.

Accordingly, we will deny Banks' mandamus petition.

¹ We note that Banks' prior allegations of improper electronic surveillance in connection with a separate criminal proceeding have been summarily rejected. See United States v. Banks, 693 F. App'x 119, 120 (3d Cir. 2017) (not precedential) (stating that "Banks did not point to any evidence used against him at trial which might have been obtained pursuant to the FISA"); United States v. Banks, W.D. Pa. Crim. No. 2:03-cr-00245 (order entered July 3, 2019) (noting that "there is no evidence that a FISA warrant existed with respect to this matter").