

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

July 11, 2023

Christopher M. Wolpert
Clerk of Court

GREGORY D. CROSBY, a/k/a
Gregory D. Cosby,

Petitioner - Appellant,

v.

A. CILLIO, Warden; DITO
BANELOOS, Lt., Officer; J.
HOLBROOK, Correctional Counselor,

Respondents - Appellees.

No. 23-1100
(D.C. No. 1:22-CV-01271-WJM)
(D. Colo.)

ORDER AND JUDGMENT*

Before **PHILLIPS, BALDOCK, and ROSSMAN**, Circuit Judges.

Petitioner-Appellant Gregory Crosby, proceeding pro se,¹ appeals the district court's dismissal of his second 28 U.S.C. § 2241 petition contesting the

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ We construe Crosby's pro se filings liberally. *Brace v. United States*, 643 F.3d 1167, 1169 (10th Cir. 2011) (citation omitted).

results of a prison disciplinary proceeding. Exercising jurisdiction under 28 U.S.C. § 2253(a), we affirm.²

In a disciplinary proceeding, Crosby, a prisoner at USP Florence, was found guilty of destroying a television in his prison cell. As a result, the disciplinary board ordered Crosby to pay \$150 in restitution from his inmate trust account and docked him twenty-seven days of good-conduct-time credits. Crosby also lost ninety days of commissary, email, and visitation privileges and was housed in disciplinary segregation for fifteen days. Crosby appealed the guilty finding through Bureau of Prisons (BOP) administrative proceedings, maintaining that the television had fallen from its stand.

While the appeal was pending before the BOP, Crosby filed his first “habeas application under 28 U.S.C. § 2241, claiming he had been denied due process in [that] disciplinary hearing.” *Crosby v. Warden ADX (Crosby I)*, No. 22-1173, 2022 WL 17826117, at *1 (10th Cir. Dec. 21, 2022) (unpublished). The district court dismissed that habeas petition after concluding that Crosby had not exhausted his administrative remedies, and Crosby appealed that decision. *Id.* While that first § 2241 appeal was pending before our court, the BOP granted Crosby’s administrative appeal, acknowledging a

² Crosby has filed numerous petitions in our court, using the name “Crosby” and “Cosby” interchangeably. Though the district court here referred to him as Cosby, we use Crosby for continuity with our prior opinion.

“procedural error” in the administrative proceedings. BOP then expunged the incident report and returned \$150 to Crosby’s inmate trust account.

Because the BOP had already granted the relief that Crosby sought, “a favorable decision could not provide Mr. Crosby any further relief.” *Id.* We dismissed his first appeal as moot. *Id.*

After the BOP expunged the incident report but before we decided *Crosby I*, Crosby filed a second writ of habeas corpus under § 2241. He again claimed that the BOP had denied him due process during the administrative hearings, so he asked the district court to “restore” the “monetary fine [of] \$150” and the twenty-seven days of good-conduct-time credits. The respondents countered that the case was moot because the \$150 had been returned to Crosby’s inmate trust account and his record expunged. Thus, Crosby’s interest in the case had been extinguished. Crosby filed a response in opposition, admitting that the government’s mootness explanation was “somewhat true.” But he maintained that “had the court took the correct initial [position] in *Crosby I*, these matters would not exist at all.”

After we issued our decision in *Crosby I*, Crosby filed a “Motion to Call the Docket or Enter Judgment,” requesting that the district court “enter its final judgment in support of the said petitioner” on his second § 2241 petition. Crosby asked the district court to enter an order requiring respondents to pay fees and costs associated with the litigation.

The district court agreed with the respondents that the second habeas action was also moot because “Crosby . . . received all of the relief he was seeking.” And because Crosby didn’t meet any of the exceptions to the mootness doctrine, the court dismissed his habeas claim for lack of jurisdiction. The court also noted Crosby’s argument that he was “entitled to court costs and fees” related to the litigation but concluded that this did not “establish a secondary or collateral injury to overcome the mootness doctrine.” And because “the controversy is moot,” the court ruled that “there is no prevailing party entitled to court costs or fees.” The district court entered its final order denying Crosby’s petition for a writ of habeas corpus, and Crosby timely appealed.

On appeal, Crosby asks us to review only one issue: whether “a petitioner has a right to fees/cost[s] when the matter has been deem[ed] moot or resolved.” Crosby argues that he spent money appealing the prison’s administrative decision to the district court and to our court, including postage stamps and filing fees. He claims he is “entitled to fees and cost[s]” because it was the “Respondents[’] fault” that he incurred those costs in the first place. Respondents counter that “Crosby provide[d] no argument or legal authority as to why he is entitled to costs and fees here; nor does he explain why he is entitled to reimbursement for expenses incurred in separate proceedings.”

“This Court reviews de novo the district court’s dismissal of [a] habeas petition as moot.” *Lorance v. Commandant, U.S. Disciplinary Barracks*, 13 F.4th 1150, 1152 (10th Cir. 2021) (citation omitted). We agree with the

district court that Crosby is not entitled to fees and costs related to his § 2241 petitions. If Crosby is seeking reimbursement for expenses incurred in filing his two habeas petitions, he can't do so; habeas petitioners can't recover fees and costs associated with litigation. *Ewing v. Rodgers*, 826 F.2d 967, 970–71 (10th Cir. 1987) (“[A] habeas petition challenging confinement arising from a criminal judgment is not a ‘civil action’ insofar as the collateral and largely procedural endeavor of awarding attorney’s fees [and costs].” (footnote omitted)).

Crosby also isn't entitled to costs or fees as a prevailing party because the district court dismissed his § 2241 claims as moot. *E.g.*, *Demis v. Sniezek*, 558 F.3d 508, 513 (6th Cir. 2009) (“[T]he courts have no authority to award [a petitioner] costs and fees as the ‘prevailing party’ when the underlying action has been dismissed as moot.” (citing *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 480 (1990))). We have no legal basis to order that the respondents pay costs and fees related to Crosby's § 2241 petitions.

We affirm the district court's order denying Crosby's petition for a writ of habeas corpus under § 2241. We also deny his request to proceed in forma pauperis.

Entered for the Court

Gregory A. Phillips
Circuit Judge