

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-40285



MICHAEL KENNEDY,

Petitioner - Appellant
v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent - Appellee

Appeal from the United States District Court for the
Eastern District of Texas

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of May 16, 2018, for want of prosecution. The appellant failed to timely comply with this court's April 9, 2018 notice regarding sanctions owed.

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit

Jann Wynne

By: _____
Jann M. Wynne, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

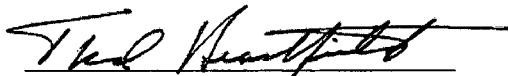
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MICHAEL KENNEDY, #1516203 §
VS. § CIVIL ACTION NO. 6:18cv67
DIRECTOR, TDCJ-CID §

FINAL JUDGMENT

The Court having considered Petitioner's case and rendered its decision by opinion issued this same date, it is hereby **ORDERED** that Petitioner take nothing by his suit and that the petition is **DISMISSED** without prejudice.

SIGNED this the 20 day of March, 2018.



Thad Heartfield
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
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MICHAEL KENNEDY, #1516203 §
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ORDER OF DISMISSAL

Petitioner Michael Kennedy, an inmate confined in the Texas prison system, proceeding *pro se*, filed the above-styled and numbered petition for a writ of habeas corpus challenging an Anderson County conviction for Burglary of a Habitation. The petition was referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation concluding that the lawsuit should be dismissed pursuant to sanctions imposed by the United States Court of Appeals for the Fifth Circuit. Kennedy has filed objections.

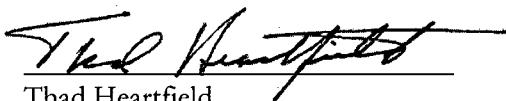
In the objections, Kennedy challenges the reasons leading to the imposition of sanctions. The Fifth Circuit, as opposed to this Court, is the appropriate forum in which to challenge the reasons for the imposition of the sanctions. In preparing the Report and Recommendation, Magistrate Judge Love received confirmation from the Fifth Circuit that the sanctions were still in place. This Court is obligated to comply with the sanctions imposed by the Fifth Circuit, and Kennedy's petition must be dismissed pursuant to the sanctions.

The Report of the Magistrate Judge, which contains his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and

having made a *de novo* review of the objections raised by Kennedy to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and Kennedy's objections are without merit. Therefore, the findings and conclusions of the Magistrate Judge are adopted as the findings and conclusions of the Court. It is accordingly

ORDERED that the above-styled petition for a writ of habeas corpus is **DISMISSED** without prejudice until such time as Kennedy shows proof that all of the sanctions which have been imposed against him, either by the Fifth Circuit or by any courts within the jurisdiction of the Fifth Circuit, have been satisfied. All motions not previously ruled on are **DENIED**.

SIGNED this the 20 day of March, 2018.



Thad Heartfield
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MICHAEL KENNEDY, #1516203 §
VS. § CIVIL ACTION NO. 6:18cv67
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REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner Michael Kennedy, an inmate confined in the Texas prison system, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred for findings of fact, conclusions of law and recommendations for the disposition of the case.

Kennedy is attempting to challenge his Anderson County conviction for Burglary of a Habitation, Cause No. 18349. He was sentenced to five years of imprisonment on April 24, 1984.

Kennedy has a long history of filing frivolous and vexatious pleadings, including the submission of forged documents to the federal courts, for which he has incurred thousands of dollars in sanctions. This Court previously outlined his history of sanctions as follows:

Kennedy is all well too known to this Court. He has been repeatedly sanctioned by the Fifth Circuit and by various district courts within the Fifth Circuit for blatant abuse of the judicial process, including the submission of forged documents to the courts. *See, e.g., Kennedy v. Burkett, et. al.*, slip op. no. 92-8469 (5th Cir., July 12, 1993) (affirming \$100 sanction for filing forged affidavit in the Western District of Texas); *Kennedy v. Morales*, slip op. no. 92-8594 (5th Cir., June 17, 1993) (imposing \$1,000 sanction); *Kennedy v. Collins*, slip op. no. 93-4837 (5th Cir., December 16, 1993) (imposing \$1,500.00 in sanctions). Kennedy has satisfied some of these sanctions, but a 1998 motion to reduce the remainder of his sanctions was denied by the Fifth Circuit. *In re Kennedy*, slip op. no. 98-86 (5th Cir., April 9, 1998).

Kennedy v. Director, TDCJ-ID, No. 6:02cv12 (E.D. Tex. Jan. 24, 2002). Moreover, in *Morales*, the Fifth Circuit barred him from filing any appeals until the sanctions were paid. The Fifth Circuit entered another preclusion order in *In re Kennedy*, No. 98-316 (5th Cir. July 22, 1998) (“no further pleadings shall be accepted for filing by the Clerk of this Court or the Clerks of all Courts subject to the jurisdiction of this court until all monetary sanctions previously imposed are paid”).

More recently, this Court dismissed another petition for a writ of habeas corpus without prejudice until such time as Kennedy shows that all of the sanctions imposed upon him by the Fifth Circuit or by any court within the jurisdiction of the Fifth Circuit have been satisfied. *Kennedy v. Director, TDCJ-CID*, No. 6:14cv498 (E.D. Tex. Oct. 17, 2014). The Fifth Circuit dismissed his appeal because he failed to timely provide proof of payment of prior court sanctions. *Kennedy v. Stephens*, No. 16-40375 (5th Cir. April 26, 2016). Kennedy subsequently filed motions for reconsideration in this Court, which were rejected with the following order:

[N]o further filings from the Petitioner Michael Kennedy shall be accepted in this civil action unless and until this case is reopened by order of the Fifth Circuit Court of Appeals, other than a notice of appeal of this order and an application for leave to proceed *in forma pauperis* in conjunction with such a notice. Because Kennedy has been barred by the Fifth Circuit from filing appeals without satisfying the sanctions imposed upon him, any notice of appeal filed by Kennedy must be accompanied by proof that all sanctions imposed against him have been paid. *See Kennedy v. Morales*, slip op. no. 92-8594 (5th Cir., June 17, 1993) (Kennedy sanctioned \$1,000 and barred from filing appeals until this sum is paid); *Kennedy v. Collins*, slip op. no. 93-4837 (\$1500.00 sanction).

Kennedy v. Director, TDCJ-CID, No. 6:14cv498 (E.D. Tex. Feb. 9, 2017). On appeal, the Fifth Circuit advised Kennedy that his appeal could not proceed until he established that he had paid the sanctions imposed in Case Number 92-8594 and Case Number 93-4837. The Fifth Circuit dismissed the appeal for failure to comply with the notice. *Kennedy v. Davis*, No. 17-40126 (5th Cir. May 16, 2017). Subsequently in that same appeal, on August 4, 2017, the Fifth Circuit sent Kennedy a notice that “[d]espite your assertions that these sanctions have been paid, we have no record of payments being received, and you do not provide proof of payments having been made.”

In the present case, Kennedy still has not shown that the sanctions imposed in Case Number 92-8594 and Case Number 93-4837 have been paid. The Court contacted the Clerk of the Fifth Circuit and was advised that Kennedy still has not paid the sanctions imposed against him in those two cases. Kennedy may not proceed with the present lawsuit until he satisfies all sanctions. Consequently, the lawsuit should be dismissed without prejudice in accordance with the orders issued by the Fifth Circuit.

Recommendation

It is accordingly recommended that the above-styled petition for a writ of habeas corpus be dismissed without prejudice until such time as Petitioner Michael Kennedy shows proof that all of the sanctions which have been imposed against him, either by the Fifth Circuit or by any courts within the jurisdiction of the Fifth Circuit, have been satisfied.

Within fourteen (14) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations contained in the report.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within fourteen days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), superseded by statute on other grounds, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

So ORDERED and SIGNED this 15th day of February, 2018.


JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE