

United States Court of Appeals

**FIFTH CIRCUIT
OFFICE OF THE CLERK**

**LYLE W. CAYCE
CLERK**

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

August 04, 2017

#1516203
Mr. Michael Kennedy
CID Polunsky Prison
3872 FM 350, S.
Livingston, TX 77351-0000

No. 17-40126 Michael Kennedy v. Lorie Davis, Director
USDC No. 6:14-CV-498

Dear Mr. Kennedy,

We have filed your "Motion for Rehearing and Motion Request Leave to File Out of Time Motion for Rehearing, Etc." as only a motion to reinstate. Your appeal was dismissed on May 16, 2017 for failure to provide proof of payment for the outstanding monetary sanctions imposed in 92-8594, Kennedy v. Morales and 93-4837, Kennedy v. Collins. Despite your assertions that these sanctions have been paid, we have no record of payments being received, and you do not provide proof of the payments having been made.

No further action will be taken on the request to reinstate since you have not remedied the default. We will resume the processing of your motion to reinstate only upon receipt of proof that the original default has been remedied. Until such time, we again remind you that forthcoming submissions that do not provide proof of payment will be neither addressed nor acknowledged.

Further, the Court normally will not reinstate a case dismissed by the clerk under 5TH CIR. R. 27.1.6 unless the default is remedied within 45 days from the date of dismissal. (See I.O.P. following 5TH CIR. R. 27)

Sincerely,

LYLE W. CAYCE, Clerk

D. Henley

By: Donna L. Mendez, Deputy Clerk
504-310-7677

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

MICHAEL KENNEDY §
v. § CIVIL ACTION NO. 6:14cv498
DIRECTOR, TDCJ-CID §

MEMORANDUM OPINION AND ORDER
DENYING RECONSIDERATION AND *IN FORMA PAUPERIS* STATUS ON APPEAL

The Petitioner Michael Kennedy filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. The petition was dismissed on October 17, 2014, because Kennedy failed to show proof that all of the sanctions imposed upon him have been satisfied. Kennedy filed a notice of appeal of the magistrate judge's report, and this appeal was dismissed for want of jurisdiction on November 13, 2014.

Kennedy then filed a notice of appeal of the final judgment. The Fifth Circuit dismissed this appeal on December 31, 2014.

On June 29, 2015, Kennedy filed a motion to reopen his case, following this on July 13 with a second such motion. These motions were denied on February 24, 2016. Kennedy filed three notices of appeal as well as a motion for leave to proceed *in forma pauperis* on appeal and a motion for a certificate of appealability. The motion for leave to proceed *in forma pauperis* on appeal and motion for a certificate of appealability were denied on April 20, 2016. On April 26, 2016, Kennedy's appeal of the denial of his motions to reopen the case was dismissed for failure to timely provide proof of payment of prior court sanctions.

Kennedy then filed motions for reconsideration of the denial of the certificate of appealability and leave to proceed *in forma pauperis*, claiming that he was denied his right to appointment of counsel on appeal. These motions were denied on December 20, 2016.

On January 11, 2017, Kennedy filed two motions for reconsideration of the denial of his prior motion for reconsideration. He followed this with a notice of appeal, a motion to reopen his petition, a motion for leave to proceed *in forma pauperis*, and a motion for certificate of appealability.

None of Kennedy's current motions show proof that the sanctions imposed upon him have been satisfied. Nor do they offer any valid basis for reconsideration of the denial of reconsideration, or for the reopening of his habeas corpus petition.

Furthermore, a review of the record shows Kennedy's appeal is plainly taken in bad faith. In *United States v. Acosta*, 216 F.3d 1079, 2000 U.S. App. LEXIS 40657 (5th Cir., May 8, 2000), *citing Borning v. Hymel*, 764 F.2d 1041, 1041-42 (5th Cir. 1985) (Section 2254 proceeding), the Fifth Circuit explained that "the proper disposition [for certifying a bad-faith appeal in a case not covered by the Prison Litigation Reform Act] would have been an order certifying that the appeal was in bad faith, denying IFP on appeal, and doing no more.") *See also Estrada v. Dretke*, 162 F.App'x 292, 2006 U.S. App. LEXIS 474 (5th Cir., January 9, 2006) (denying habeas petitioner IFP status on appeal after the district court entered a Rule 24 certification that the petitioner's appeal was not taken in good faith). It is accordingly

ORDERED that the Plaintiff's motions for reconsideration (docket no.'s 38 and 39), motion to reopen (docket no. 40), and motion for certificate of appealability (docket no. 43) are **DENIED**. It is further

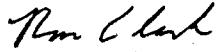
ORDERED that the Plaintiff's motion for leave to proceed *in forma pauperis* on appeal (docket no. 42) is **DENIED** as taken in bad faith. Finally, it is

ORDERED that no 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 \$1,000.00 and barred from filing appeals until this sum is paid); *Kennedy v. Collins*, slip op. no. 93-4837 (\$1500.00 sanction).

So Ordered and Signed

Feb 8, 2017


Ron Clark, United States District Judge