

No: _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE NAWAZ AHMED – PETITIONER

Vs.

TIM SHOOP, WARDEN, RESPONDENT,
COURT OF APPEALS FOR THE SIXTH CIRCUIT,
HON. DIST.COURT JUDGE MICHAEL WATSON,

DEBORAH S. HUNT, CLERK OF COURT OF APPEALS FOR THE SIXTH CIR,^X

=====

ON PETITION FOR AN EXTRAORDINARY WRIT
IN AID OF APPELLATE JURISDICTION TO
COURT OF APPEALS FOR THE SIXTH CIR.

JOINT APPENDIX

NAWAZ AHMED,
A404511, Pro Se, Petitioner,
Chillicothe Correctional Institute,
P.O.Box 5500
Chillicothe, OHIO 45601.

JOINT APPENDIX

INDEX TO APPENDICES

- APPENDIX A Ahmed v. Shoop, 2018 U.S. App. LEXIS 11015(6th Cir. Apr. 27,2018
- APPENDIX B Ahmed v. Shoop, 2018 U.S. App. LEXIS 13252 (6th Cir.May 21,2018.
- APPENDIX C **unreported**, Panel Order Ahmed v. Shoop, (6th Cir. July 02, 2018)
Vacated the Panel Order filed May 21,2018.
- APPENDIX D Ahmed v. Shoop, 2018 U.S. App. LEXIS 27698 (6th Cir, Sep.27, 2018)
- APPENDIX E Ahmed v. Shoop, 2018 U.S. App. LEXIS 34037 (6th Cir, Dec. 03, 2018)
- APPENDIX F Order of the Magistrate Judge of the United States **District Court** dated
January 30, 2018 is unpublished.
- APPENDIX G Order of the United States District Judge dated **February 15, 2018** is
unpublished.
- APPENDIX H A letter from senior case manager, noticing Attorney Adel Shank for
appellate representation of Petitioner but ignored by counsel, despite
getting served all pleadings, all notices, and all orders.
- APPENDIX I The Letter by Chief Deputy Clerk Susan Rogers dated December 27,2018
in case 18-3292, denying filing of Motion To Reconsider authorized by
FRAP 27(a)(1),(b), 45 and 6th Cir. R 27(g), I.O.P. 27 and Ct App 6th
Cir, IOP 35(d)(1)(2)(A)(B) and IOP 45(a)(5), (c) Reconsideration
Motion is attached.
- APPENDIX J A Letter from Hon. Clerk of Supreme Court denying § 3599(a)(2),(e), pro

se Motion For Appointment of capital habeas counsel for preparing and filing the **Petition For WRIT Of Certiorari** and PETITION FOR AN EXTRAORDINARY WRIT. Sd/ Jacob C, dated January 29,2019.

APPENDIX K

A copy of court of appeals case 18-3292 docket contain many erroneous *entries* involving Notice of Appeal (Doc.4), Petition for rehearing (Doc.9 later filed as Doc.19), New Petition for Rehearing En Banc (Doc.22) wrongly identified as Supplemental Memorandum of Law, when 6th Cir. IOP 35 (a)(2)(A) provided for an amended or a New Petition For Rehearing En Banc and declining to docket Motion to Reconsider.

INDEX OF APPENDICES OF INJUNCTION/RESTRAINING ORDERS

APPENDIX L

Order filed 4/16/2008 (ECF.#32) at last para, page 5 of 5, (Nawaz Ahmed v. Marc C. Houk, 2:07-cv-658,2008 U.S. Dist. LEXIS 109687 (April 16, 2008 Order, doc. 32, id at last para)). Order filed 4/16/2008 (ECF.#32) at last para, page 5 of 5), seeking another or Substitute or Replacement habeas counsel paid by the brother of Petitioner, but was denied. By this restraining/injunction order, Petitioner was also prevented from filing statutorily allowed 28 USCS § 2242, 28 USCS § 2254 placeholder 1st habeas Petition in case 2:07-cv-658, after Petitioner learned that habeas counsels were scanning appeal brief and scanning application to reopen appeal with all impermissible state law claims (universally condemned practice), to call it their 1st habeas Petition, and excluding all claims preserved by postconviction

counsel and presented by pro se amendments to postconviction Petition and also those claims presented pro se during the first Appeal of Right. The habeas counsel had cut-off-all communications with Petitioner, it appeared they may not even file any 1st habeas Petition by due date or show it to Petitioner before filing. Because no judge would not allow late filing of Petition due to counsel misconduct, so preventing Petitioner to protect his rights was unconscionable.

APPENDIX M Order filed 07/09/14 (ECF.#96) sue sponte, without any hearing,

APPENDIX N Order filed 02/19/15 (ECF.#111, PageID# 9955-9957) striking 28 USCS § 455, 28 USCS § 144 pro se Motions (ECF.107, filed 01/13/2015) and striking pro se **Motion for Substitution** of capital habeas counsels (ECF.110, filed 02/18/2015), was ordered stricken of Records.

APPENDIX O The Order filed 03/11/15 (**ECF.#114, PageID# 9961**), striking pro se 28 USCS § 2250 Motion for Records was filed in violation of any law but resulted in another restraining/Injunction.

APPENDIX P Motion For Substitution of Attorney Keith A. Yeazel (ECF.132-1) filed in 02/26/2018 in district court case Ahmed v. Houk, 2:07-cv-658 in compliance with (Appendix F), was constructively, impliedly denied without ruling upon it, and was presented in Notice of Appeal (Appendix Q), Petition for Rehearing (Doc.16) and in New Petition for Rehearing En Banc (Doc.22,Appendix R) and in Motion for Reconsideration, Setaside (Doc.24,25;Appendix T).

**INDEX OF APPENDICES OF PLEADINGS FILED IN CASE 18-3292
BUT INCORRECTLY DOCKETED, NOR CIRCULATED TO PANEL
AND/OR TO FULL COURT**

APPENDIX Q Notice of Appeal (Doc.4) not shown on case docket, mentioned the filing of the Motion to Substitute (Ecf.#132) Capital Habeas Corpus Counsel Keith A. Yeazel by the filing date of 02/26/2018, and on next three pages Appellant elaborated further by more facts. Magistrate Judge had set two preconditions for full grant of Motion to Withdraw (Ecf.#129) as two prerequisite conditions are set forth in the Magistrate’s Order Ecf.#130 (Appendix “F”). In the Notice of Appeal (Doc.4) it could not be listed as a separate 3rd order because District Court had denied the Motion without ruling upon it, without filing any actual order. However, on Pages 1& 2 addendum to the Notice of Appeal, the Appellant sufficiently explained the circumstances and correctly identified the Motion to Substitute as ECF#132, and how it was circumvented and implicitly, constructively denied, without ruling upon the responsive Motion to Substitute. At page 4, Petitioner-Appellant identified the unconstitutionally overbroad **“injunctions orders”** entered sue sponte without any hearings. The implication of constructive, implicit denial of Motion for Substitution(Ecf.132) is obvious from ECF #130-1 (Appendix “G”) in which district judge Watson after meeting ex-party with Mr. Yeazel twice, (a) decided to circumvent the Magistrate Judge having full authority to rule upon non-dispositive motions and (b) disregarded the due filing date

of March 01,2018 for Petitioner to file his Responsive Motion (Ecf.#132-1, as actually filed ahead of due date on 02/16/2018) and (c) appointed Mr. Yeazel as “counsel of record”. These facts so obvious from the text of the Second Order (Appendix “G”) appealed from, are very relevant to explain why implicit, constructive denial of Motion to Substitute occurred because on 02/15/2018, the Hon. Judge Watson had already decided that he will not allow review of Motion for Substitution of Mr. Yeazel, even if it is filed on or before due date, even when ordered by the magistrate judge having full authority over non-dispositive Motions, Orders. Petitioner in Notice of Appeal under the some what made up sub-heading “Proof of service” further explained it in the writing between the two signatures in the Notice of Appeal, full circumstances how and why Motion to Substitute was denied without ruling upon it.

APPENDIX R **New Petition for Rehearing En Banc** (Doc.22) neither correctly docketed, nor circulated, thus denied without considering it, even when timely filed per 6th Cir. IOP 35 (a)(2)(A),(g).

APPENDIX S **Motion to Substitute Appeal Counsel** S. Adele Shank (Doc.18) was not correctly docketed as FILED but as TENDERED and not circulated to the Clerk and or to the Panel, thus also ignored by the Clerk and by the sixth Cir. Court of Appeals.

APPENDIX T **Motion to Reconsider** (Doc.25 should be Doc.24) served upon Clerk as stamped RECEIVED on 12/26/2018 and also directly served upon all three circuit judges of the panel, as evident from the one served upon Hon.

Cir.Judge SUTTON is filed while the En Banc Coordinator refused its filing and returned it without filing with a letter from Chief deputy Clerk. This Motion to Reconsider again requested review of all injunction, all orders, and constructive denial of Substitution Motion by Mandamus Jurisdiction.

APPENDIX U

A copy of Case Docket 18-3292 docket of 6th Cir. Court of Appeals, is at (Appendix U) to the Petition, to show that it contains many erroneous entries involving Notice of Appeal (Doc.4), Petition for Rehearing (Doc.9 later filed as Doc.16), New Petition for Rehearing En Banc (Doc.22) wrongly docketed as non-existing Supplemental Memorandum of Law, when 6th Cir. IOP 35 (a)(2)(A) provided for an amended or a New Petition For Rehearing En Banc and it declin to docket "Motion to Reconsider".

APPENDIX V

Superseded Petition For Rehearing.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 27, 2018
DEBORAH S. HUNT, Clerk

NAWAZ AHMED,)
)
Petitioner-Appellant,)
)
v.)
)
TIM SHOOP, Warden,)
)
Respondent-Appellee.)

ORDER

Before: SUHRHEINRICH, GILMAN, and SUTTON, Circuit Judges.

This matter is before the court upon initial consideration to determine whether this appeal was taken from an appealable order.

Nawaz Ahmed, a prisoner sentenced to death by the State of Ohio, has a habeas corpus action pursuant to 28 U.S.C. § 2254 pending in the district court. On January 30, 2018, Ahmed’s attorney filed a motion to withdraw as counsel, citing his retirement from the practice of law. The magistrate judge granted the motion to withdraw and directed counsel to propose a substitution of counsel. On February 15, 2018, the district court appointed Attorney Adele Shank to serve as co-counsel for Ahmed. Ahmed appealed on March 15, 2018, from the January 30, 2018 and February 15, 2018 orders.

The general rule is that most pretrial orders in criminal prosecutions are not immediately appealable. *Flanagan v. United States*, 465 U.S. 259, 260, 265-67 (1984) (holding that “pretrial disqualification of defense counsel in a criminal prosecution is not immediately appealable under 28 U.S.C. § 1291,” and discussing the limited circumstances in which review is available under the collateral-order doctrine of an interlocutory order in a criminal prosecution). We see no compelling reason to deviate from the general rule.

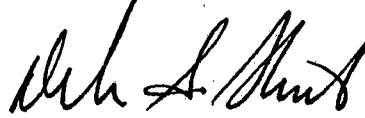
APPENDIX A

No. 18-3292

- 2 -

The appeal is therefore **DISMISSED**.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", written in a cursive style.

Deborah S. Hunt, Clerk

No. 18-3292

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 02, 2018
DEBORAH S. HUNT, Clerk

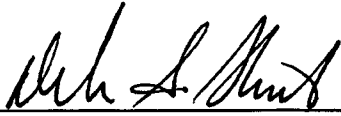
NAWAZ AHMED,)
)
 Petitioner-Appellant,)
)
 v.)
)
 TIM SHOOP, Warden,)
)
 Respondent-Appellee.)

ORDER

In view of the petitioner's motion to reconsider the denial of his motion for an extension of time, and it appearing that the petition for rehearing en banc was timely submitted to prison authorities for filing,

The order of May 21, 2018 denying the motion to extend the time for appeal is VACATED. The petition for en banc tendered on May 14, 2018 will be filed and circulated in the normal fashion.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 27, 2018
DEBORAH S. HUNT, Clerk

NAWAZ AHMED,)
)
 Petitioner-Appellant,)
)
 v.)
)
 TIM SHOOP, Warden,)
)
 Respondent-Appellee.)
)

ORDER

Before: SUHRHEINRICH, GILMAN, and SUTTON, Circuit Judges.

This matter is before the court upon initial consideration to determine whether this appeal was taken from an appealable order.

Nawaz Ahmed, a prisoner sentenced to death by the State of Ohio, has a habeas corpus action pursuant to 28 U.S.C. § 2254 pending in the district court. On January 30, 2018, Ahmed’s attorney filed a motion to withdraw as counsel, citing his retirement from the practice of law. The magistrate judge granted the motion to withdraw that same day and directed counsel to propose a substitution of counsel. On February 15, 2018, the district court appointed Adele Shank to serve as co-counsel for Ahmed. Ahmed appealed on March 15, 2018, from the January 30, 2018 and February 15, 2018 orders.

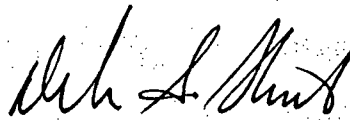
Except for the limited categories of interlocutory orders set forth at 28 U.S.C. § 1292, federal appellate jurisdiction is reserved for “final decisions of the district courts of the United States.” 28 U.S.C. § 1291. The decision underlying this appeal is interlocutory in that no final order or judgment has been entered by the district court. Further, the order has not been certified appealable by the district court pursuant to 28 U.S.C. § 1292(b), and none of that statute’s prerequisites otherwise apply to confer jurisdiction on this court. Consequently, the only way we

may have jurisdiction to review the order on appeal is if it is among “that small class [of decisions] which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.” *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). An order is appealable under the *Cohen* collateral order doctrine “if it (1) conclusively determines the disputed question; (2) resolves an important issue completely separate from the merits of the action; and (3) is effectively unreviewable on appeal from a final judgment.” *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 105 (2009) (citation omitted).

The order granting counsel’s motion to withdraw does not satisfy the requirements of the collateral order doctrine and is therefore not immediately appealable. *See Schwartz v. City of New York*, 57 F.3d 236, 237 (2d Cir. 1995) (concluding that an order granting Corporation Counsel’s motion to withdraw as counsel “is not a final judgment for purposes of 28 U.S.C. § 1291 and does not fall within the ‘collateral order’ exception to the final judgment rule”). Assuming that the order at issue is separable from the underlying merits of the case, it is not effectively unreviewable on appeal from a final judgment. *See Mohawk Indus., Inc.*, 558 U.S. at 105; *Cohen*, 337 U.S. at 546-47.

The appeal is therefore **DISMISSED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

Ahmed v. Shoop, 2018 U.S. App. LEXIS 34037

United States Court of Appeals for the Sixth Circuit

December 3, 2018, Filed

No. 18-3292

NAWAZ AHMED, Petitioner-Appellant, v. TIM SHOOP, WARDEN, Respondent-Appellee.

Prior History: Ahmed v. Shoop, 2018 U.S. App. LEXIS 27698 (6th Cir., Sept. 27, 2018)

Core Terms

petition for rehearing, en banc

Counsel: [*1] Nawaz Ahmed, Petitioner - Appellant, Pro se, Chillicothe, OH.

For Nawaz Ahmed, Petitioner - Appellant: S. Adele Shank, Law Office of S. Adele Shank, Columbus, OH.

For TIM SHOOP, Warden, Respondent - Appellee: Charles L. Wille, Jocelyn Kelly Lowe, Office of the Attorney General of Ohio, Columbus, OH.

Judges: BEFORE: SUHRHEINRICH, GILMAN, and SUTTON, Circuit Judges.

Opinion

ORDER

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission [Doc.16] and decision of the case. The petition [Doc.16) then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

NAWAZ AHMED,

Petitioner,

Case No. 2:07-cv-658

-vs.-

District Judge Michael H. Watson
Magistrate Judge Michael R. Merz

MARC C. HOUK, Warden,

Respondent

ORDER

This capital habeas corpus case is before the Court on Motion of Attorney David Graeff to withdraw as counsel for the Petitioner (ECF No. 129).

The Court find that the stated reason for withdrawal – intention to retire from then practice of law – constitutes good cause¹ and the Motion is accordingly GRANTED on the following condition:

1. The Petitioner has been notified by counsel and may file any response not later than March 1, 2018. Mr. Graeff shall provide a copy of this Order to Petitioner.
2. Because federal law requires the appointment of two attorneys to represent a capital habeas petition, Mr. Graeff's withdrawal is contingent upon substitution of another qualified attorney as co-counsel with Mr. Yeazel. Messrs. Yeazel and Graeff are directed to consult

¹ The Magistrate Judge is himself in his forty-eighth year since admission to practice.

Revd
2/3/18

and to propose a substitution to the Court not later than February 15, 2018.

January 30, 2018.

s/ Michael R. Merz
United States Magistrate Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

NAWAZ AHMED,

Petitioner,

v.

MARK C. HOUK, Warden

Respondent.

Case No. 2:07-cv-658

Judge Michael H. Watson

Magistrate Judge Michael R. Merz

ORDER

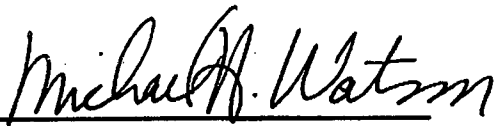
Petitioner, a prisoner sentenced to death by the State of Ohio, has pending before this Court a habeas corpus action pursuant to 28 U.S.C. § 2254. This matter is before the Court to appoint co-counsel for Petitioner.

On January 30, 2018, Attorney David Graeff filed a motion to withdraw as counsel, citing his retirement from the practice of law. ECF No. 129. The Magistrate Judge granted the motion to withdraw, and directed counsel to propose a substitution of counsel. ECF No. 130.

Having conferred with counsel, the Court hereby **APPOINTS** Attorney S. Adele Shank to serve as co-counsel for Petitioner. The Court finds Attorney Shank is more than qualified to represent Petitioner in these proceedings, as she has substantial experience representing capital defendants in post-trial proceedings, including federal habeas corpus. The Court takes notice that Attorney Shank currently serves as lead counsel in at least one other death

penalty habeas corpus action in this Court, to wit: *Scudder v. Mitchell*, 2:00-cv-17
(S.D. Ohio), pending before the Honorable Algenon L. Marbley.

IT IS SO ORDERED.


MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
Clerk

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: April 03, 2018

Mr. Nawaz Ahmed

Ms. Jocelyn Kelly Lowe

Mr. Charles L. Wille

Ms. S. Adele Shank

Re: Case No. 18-3292, *Nawaz Ahmed v. Tim Shoop*
Originating Case No. : 2:07-cv-00658

Dear Mr. Ahmed and Counsel:

This Death Penalty appeal has been docketed as case number **18-3292** with the caption that is enclosed on a separate page.

Before preparing any documents to be filed, counsel are strongly encouraged to read the Sixth Circuit Rules at www.ca6.uscourts.gov. If you have not established a PACER account and registered with this court as an ECF filer, you should do so immediately. Your password for district court filings will not work in the appellate ECF system.


At this stage of the appeal, the following forms should be downloaded from the web site and filed with the Clerk's office by **April 17, 2018**.

Appellant: Appearance of Counsel

Appellee: Appearance of Counsel

Since this is a Death Penalty case, all filings must be prominently identified as such. This Court will issue further instructions once this case has been reviewed for jurisdiction.

Sincerely yours,


s/Patricia J. Elder
Senior Case Manager
Direct Dial No. 513-564-7034

APPENDIX H

Enclosure

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

DEBORAH S. HUNT
CLERK

TELEPHONE
(513) 564-7000

December 27, 2018

Nawaz Ahmed
Chillicothe Correctional Institution
P.O. Box 5500
Chillicothe, OH 45601

Re: *Ahmed v. Shoop*, No. 18-3292, Document Received

Dear Mr. Ahmed,

Your document styled as a "Motion for Reconsideration and to Vacate the Clerks Actions and All Panel Orders" was received in this court. Upon the court's denial of en banc review, this appeal was closed, and no further action will be taken.

Your motion is returned to you unfiled and without further action.

Sincerely,



Susan Rogers
Chief Deputy Clerk

APPENDIX I

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

January 29, 2019

Nawaz Ahmed
#A404-511
CCI
PO Box 5500
Chillecothe, OH 45601

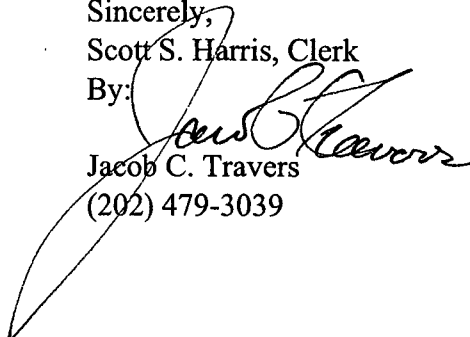
Dear Mr. Ahmed:

In reply to your letter or submission, received January 29, 2019, you are informed that this Court does not appoint counsel for the purpose of preparing a petition for writ of certiorari. A sample petition for writ of certiorari and a copy of the Rules of this Court are enclosed.

Your papers are herewith returned.

Sincerely,
Scott S. Harris, Clerk

By:


Jacob C. Travers
(202) 479-3039

Enclosures

APPENDIX J

Rcvd 10/3/18



UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 538
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

DEBORAH S. HUNT
CLERK

Tel. (513) 564-7000
www.ca6.uscourts.gov

September 27, 2018

Mr. Nawaz Ahmed

RE: Case No. 18-3292
Nawaz Ahmed v. Tim Shoop

Dear Mr. Ahmed:

The court issued an order in the above case today.

In light of the panel's action, we ask you to determine whether the petition for en banc reconsideration is to be withdrawn. If it is not, you shall have until Thursday, October 11, 2018 to file a memorandum of law supplementing your original petition. If this office does not hear from you by the close of business Thursday, October 11, 2018, we will render the petition moot and no further action will be taken.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Deborah S. Hunt".

Deborah S. Hunt
Clerk

cc: Ms. S. Adele Shank
Mr. Charles L. Willie
Ms. Jocelyn Kelly Lowe

bh

APPENDIX K

Revd
4/18/08

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

NAWAZ AHMED,

Petitioner,

v.

MARC C. HOUK, Warden,

Respondent.

Case No. 2:07cv658

JUDGE WATSON

Magistrate Judge King

ORDER

Petitioner, a prisoner sentenced to death by the State of Ohio, has pending before this Court a notice of intention to file a habeas corpus action under 28 U.S.C. § 2254. This matter is before the Court upon several *pro se* motions filed by petitioner. Specifically, this matter is before the Court upon petitioner's third *pro se* motion to appoint an additional counsel, (Doc. # 20), petitioner's *pro se* motion to modify or set aside the First Scheduling Order and request for a copy of the transcript of the status conference held on September 27, 2007, (Doc. # 22), petitioner's *pro se* motion to order the clerk, counsel for petitioner, and respondent to personally serve all documents upon petitioner, (Doc. # 23), and petitioner's letter to the Court requesting a prompt ruling and action on his request for the appointment of an additional counsel, (Doc. # 25). Respondent has filed a memorandum in opposition to each of petitioner's motions. Respondent argues that because petitioner is represented by counsel, he should not be permitted to file *pro se* motions because he has no right to hybrid representation. (Docs. # 21, 27, 28).

On September 13, 2007, the Court appointed Attorneys Keith Yeazel and David Graeff to represent petitioner in this matter. (Doc. # 3). On October 1, 2007, petitioner filed a *pro se* motion for the appointment of a third counsel, Attorney S. Adele Shank, due to the complexities

APPENDIX L

of his case and the voluminous case file. (Doc. # 9). On October 4, 2007, the Court denied petitioner's motion, finding that the appointment of two attorneys to represent petitioner was more than sufficient in this case. Petitioner then sought leave to appeal the Court's September 13, 2007 Order appointing counsel and the Court's October 4, 2007 Order denying petitioner's request for a third counsel. On December 28, 2007, the Court denied petitioner's motion for a certificate of appealability. (Doc. # 17). On February 8, 2008, the Sixth Circuit dismissed petitioner's appeal. (Doc. # 19).

Petitioner now seeks, for the third time, the appointment of a third attorney, S. Adele Shank. For all of the reasons discussed in the Court's prior Orders, petitioner's motions for the appointment of an additional or substitute counsel, (Docs. # 20, 25), are **DENIED**. The Court is of the view that Attorneys Yeazel and Graeff are more than qualified to represent petitioner in this matter. Furthermore, petitioner's belief that he has a constitutional right to counsel of his own choosing is incorrect. Petitioner has filed with this Court an affidavit of indigency. (Doc. #

1). Although petitioner has the right to have competent counsel appointed for him, which this Court has done, he does not have the right to counsel of his own choosing. See *Wilson v. Parker*, 515 F.3d 682, 696(6th Cir. 2008) ("Indigent defendants do not have the right to counsel of their choice.") (citing *Caplin & Drysdale v. United States*, 491 U.S. 617, 624 (1989) ("those who do not have the means to hire their own lawyers have no cognizable complaint so long as they are adequately represented by attorneys appointed by the courts.")); see also *U.S. v. Gonzalez-Lopez*, 548 U.S. 140 (2006) (noting that "the right to counsel of choice does not extend to defendants who require counsel to be appointed to them"); *Daniels v. Lafler*, 501 F.3d 735 (6th Cir. 2007) ("[A]n indigent defendant forced to rely on court-appointed counsel, has no choice-of-counsel

right.”).

Petitioner claims that he is not actually indigent, because the “State of Ohio, Belmont County sheriff and prosecutor are holding the funds of this petitioner with them since his arrest on 09/11/99.” (Doc. # 31, at 2). This claim, however, is beyond the scope of a federal habeas corpus proceeding, because the civil forfeiture of funds “does not state a basis for habeas relief under 28 U.S.C. § 2254.” *Floyd v. Dretke*, V-05-96, 2006 WL 2090271, *5 (S.D. Tex. July 24, 2006) (“Habeas challenges are limited to challenges to the validity of the fact of confinement or those actions that actually affect the length of a prisoner’s incarceration.”); *Van Lang v. St. Lawrence*, No. CV406-119, 2006 WL 1653630, *1 (S.D. Ga. June 7, 2006) (“Because state civil forfeiture proceedings may not be challenged using habeas corpus pursuant to §2254, this case should be dismissed without prejudice.”).

Additionally, petitioner’s motion to modify or set aside the first scheduling order, (Doc. # 22), is **DENIED**. If counsel for petitioner find it necessary to request a modification to that scheduling order, counsel may so request. Petitioner’s request for a copy of the transcript of the status conference held on September 27, 2007 is **DENIED** as no such transcript exists.

Furthermore, petitioner’s request for an order requiring the clerk, counsel for petitioner, and respondent to personally serve all documents upon petitioner, (Doc. # 23), is **DENIED**.

Rule (5) of the Federal Rules of Civil Procedure provides, in relevant part:

Rule 5. Serving and Filing Pleadings and Other Papers

...

(b) Service: How Made.

(1) *Serving an Attorney.* If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

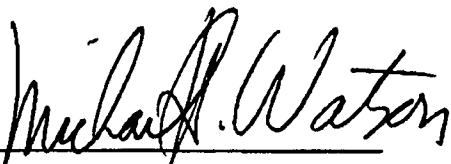
Petitioner is represented by counsel, and his counsel have been served with all documents through the Court's electronic filing system. Therefore, the Court finds that petitioner has been served under the Federal Rules of Civil Procedure.

Finally, this Court will not permit petitioner to proceed by means of hybrid representation. The Sixth Circuit has held that a defendant has no such right in a criminal case, where the right to counsel is rooted in the Constitution. *United States v. Mosley*, 810 F.2d 93, 97 (6th Cir. 1987) ("The right to defend *pro se* and the right to counsel have been aptly described as 'two faces of the same coin,' in that waiver of one constitutes a correlative assertion of the other."); *see also Wilson v. Hurt*, No. 00-3165, 2002 WL 197997, (6th Cir. Feb.6, 2002) (noting that a criminal defendant "has no constitutional right to demand 'hybrid representation,' such as conducting his own defense with the occasional assistance of counsel."). Although the Sixth Circuit has not addressed whether a habeas petitioner, whose right to counsel is statutory, has a right to hybrid representation, several district courts in the Sixth Circuit have extended the rationale of *Mosley* to habeas cases. *See, e.g., Jones v. Bradshaw*, 326 F.Supp.2d 857 (N.D. Ohio 2004) ("Because the *Mosley* Court, which adjudicated on a criminal defendant's constitutional right to hybrid representation, found that none exists, this Court consequently must find that a habeas petitioner, whose right to counsel is merely statutory, has no right to hybrid representation.") (citing *Mosley*, 810 F.2d at 97); *see also United States v. Paugh*, No. 1:02-CR-54, 2006 WL 355384 (S.D. Ohio Feb. 15, 2006) ("Neither 28 U.S.C. § 1654 nor the Sixth Amendment, however, guarantees the right to assert both the right to self-representation and the right to counsel at the same time -- *i.e.*, there is no statutory or constitutional right to 'hybrid representation.'"); *United States v. Cottrell*, No. 1:05-10087-T-AN, 2006 WL 278562 (W.D.

Tenn. Feb. 2, 2006) (same). Other circuits have reached the same result. *See, e.g., Lee v. State of Alabama*, 406 F.2d 466, 469 (5th Cir. 1968) (finding that a habeas petitioner could either proceed *pro se* or through counsel, but had no right to hybrid representation).

This Court finds that petitioner has no right to proceed both *pro se* and with the assistance of counsel. Because petitioner has no right to hybrid representation in this habeas corpus case, the Court will no longer consider *pro se* motions filed by petitioner. The Clerk shall no longer file any *pro se* pleadings by petitioner, and the Clerk is hereby instructed to return to petitioner any *pro se* filings that the clerk receives. The Court will only consider motions filed by counsel.

IT IS SO ORDERED.



MICHAEL H. WATSON
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

NAWAZ AHMED,

Petitioner,

v.

MARC C. HOUK, Warden,

Respondent.

**Case No. 2:07cv658
Judge Michael H. Watson
Magistrate Judge Merz**

ORDER

Petitioner, a prisoner sentenced to death by the State of Ohio, has pending before this Court a habeas corpus action pursuant to 28 U.S.C. § 2254. This matter is before the Court *sua sponte* to direct the Clerk of Court to not accept *pro se* pleadings submitted by Petitioner.

On April 16, 2008, this Court issued an Order finding that Petitioner has no right to proceed both *pro se* and with the assistance of counsel in this habeas corpus case. (Order, ECF No. 32.) Pursuant to that Order, the Court directed the Clerk to refuse any *pro se* pleadings submitted by Petitioner. However, on July 7, 2014, a *pro se* motion to stay was filed. (ECF. No. 94.)


561 Fed. Appx. 485

Recently, in *Miller v. United States*, No. 11-3914, 2014 WL 1303281 (6th Cir. Apr. 1, 2014), the United States Court of Appeals for the Sixth Circuit determined that “[a] habeas petitioner has neither a constitutional right nor a statutory right to hybrid representation.” *Id.* at *3. In so finding, the Sixth Circuit noted that hybrid representation has the potential to result in “undue delay.” *Id.* See also *Jells v. Mitchell*,

No. 1:98cv02453, 2011 WL 1257306 (N.D. Oh. Mar. 31, 2011) ("Because the *Mosley* Court, which adjudicated on a criminal defendant's constitutional right to hybrid representation, found that none exists, this court consequently must find that a habeas petitioner, whose right to counsel is merely statutory, see 21 U.S.C. § 848(q), has no right to hybrid representation.")

Based on the authority of *Miller*, and for the reasons set forth in this Court's Order of April 16, 2008, ECF. No. 32, the Court finds that Petitioner, who is represented by competent, experienced counsel appointed by this Court, has no right to proceed both *pro se* and with the assistance of counsel. The Clerk shall not file any *pro se* pleadings submitted by Petitioner, and the Clerk is hereby instructed to return to Petitioner any *pro se* documents that the Clerk receives. The Court will only consider pleadings filed by counsel.

IT IS SO ORDERED.


Michael H. Watson, Judge
United States District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Nawaz Ahmed,

Petitioner,

v.

Marc C. Houk, Warden,

Respondent.

Case No. 2:07-cv-658
Judge Michael H. Watson
Magistrate Judge Merz

ORDER

Petitioner, a prisoner sentenced to death by the State of Ohio, has pending before this Court a habeas corpus action pursuant to 28 U.S.C. § 2254. This matter is before the Court *sua sponte* to direct the Clerk of Court to not accept *pro se* pleadings submitted by Petitioner.

On April 16, 2008, this Court issued an Order finding that Petitioner has no right to proceed both *pro se* and with the assistance of counsel in this habeas case. Order, ECF No. 32. Pursuant to that Order, the Court directed the Clerk to refuse all *pro se* pleadings submitted by Petitioner. On July 9, 2014, the Court revisited this issue and again directed the Clerk to refuse *pro se* pleadings submitted by Petitioner. Order, ECF No. 96.

On January 13, 2015, despite this Court's Order to the contrary, the Clerk accepted a *pro se* pleading filed by Petitioner titled "Affidavit of Prejudice and Motion for Disqualification of Magistrate Judge Merz and Hon. Judge Watson"

APPENDIX N.

and "Motion to Reject the Magistrate's R&R filed 6/16/14" Motion, ECF No. 107. On January 28, 2015, counsel for Petitioner filed an Affidavit with the Court addressing Petitioner's *pro se* motion. In that Affidavit, Attorney Yeazel states that "[a]fter review of Mr. Ahmed's papers I am unable to provide a certificate in accordance with 28 U.S.C. § 144 as counsel of record stating that Mr. Ahmed's Affidavit of Prejudice and Motion for Disqualification of Magistrate Judge Merz and Judge Watson is made in good faith. That is because defense counsel has no duty to execute any directive of the accused which does not comport with the law." Yeazel Aff. ¶ 5, ECF No. 108. Thereafter, the Clerk accepted for filing another *pro se* pleading filed by Petitioner titled "Reply and Motion for Sanctions for Filing False Declaration by Counsel of Record." Reply, ECF No. 110.

As this Court has previously ruled, "[a] habeas petitioner has neither a constitutional right nor a statutory right to hybrid representation." *Miller v. United States*, No. 11-3914, 2014 WL 1303281 at *3 (6th Cir. Apr. 1, 2014). This is, in part, because hybrid representation has the potential to result in "undue delay." *Id.* See also *Jells v. Mitchell*, No. 1:98cv02453, 2011 WL 1257306, at *2 (N.D. OH. Mar. 31, 2011) ("Because the *Mosley* Court, which adjudicated on a criminal defendant's constitutional right to hybrid representation, found that none exists, this court consequently must find that a habeas petitioner, whose right to counsel is merely statutory, see 21 U.S.C. § 848(q), has no right to hybrid representation.").

For the reasons set forth in this Court's Orders of April 16, 2008, ECF. No. 32, and July 9, 2014, ECF No. 96, the Court finds that Petitioner, who is represented by competent, experienced counsel appointed by this Court, has no right to proceed both *pro se* and with the assistance of counsel. The Clerk shall not accept or file any *pro se* pleadings submitted by Petitioner, and the Clerk is hereby instructed to return to Petitioner any *pro se* documents the Clerk receives. In addition, the Clerk shall strike both the motion filed by Petitioner on January 13, 2015, ECF No. 107, and the purported reply filed on February 18, 2015, ECF No. 110, as improperly filed. This Court will only consider pleadings filed by counsel.

IT IS SO ORDERED.

s/Michael H. Watson
MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

NAWAZ AHMED,

Petitioner,

v.

**Case No. 2:07-cv-658
JUDGE MICHAEL H. WATSON**

MARC C. HOUK, Warden,

Respondent.


ORDER

Petitioner filed a letter to the Court requesting certain docket entries be sent to him. ECF No. 113. Petitioner believes he is entitled to a free copy of every document filed on his behalf using the CM/ECF system. *Id.*

Letters to the Court are not permitted unless they are requested by the Court or advise the Court of a settlement of a pending matter. S.D. Ohio R. 7.2(c). All other written communications must be by way of a formal motion or memorandum submitted in compliance with the local rules. *Id.*

Petitioner is not permitted to file *pro se* motions, however. Even if the Court construed the letter as a proper motion, it would be denied. Petitioner is represented by able counsel who has access to CM/ECF filings. Accordingly, Petitioner is not entitled to copies of such filings directly from the Court. Rather, Petitioner shall direct any requests for documents in this case to his counsel.

IT IS SO ORDERED.


**MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT**

APPENDIX O

**Additional material
from this filing is
available in the
Clerk's Office.**