



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

ELLOYD JOHNSON, Appellant

No. 05-12-00069-CR V.

THE STATE OF TEXAS, Appellee

Appeal from the 195th Judicial District Court
of Dallas County, Texas. (Tr.Ct.No. F98-
00897-PN).

Opinion delivered by Chief Justice Wright,
Justices Bridges and Myers participating.

Based on the Court's opinion of this date, we **DISMISS** the appeal for want of jurisdiction.

Judgment entered February 17, 2012.


CAROLYN WRIGHT
CHIEF JUSTICE

APPENDIX B

Order entered April 18, 2013



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-13-00429-CV

IN RE ELLOYD JOHNSON, Relator

Original Proceeding from the 196th Judicial District Court
Hunt County, Texas
Trial Court Cause No. 11-1115-RT

ORDER

Based on the Court's opinion of today's date, we **DENY** relator's petition for writ of mandamus. We **ORDER** that relator bear the costs of this original proceeding.

/s/ **MICHAEL J. O'NEILL**
JUSTICE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ELLOYD JOHNSON

ID # 840854,

Petitioner,

vs.

WILLIAM STEPHENS, Director,
Texas Department of Criminal
Justice, Correctional Institutions Division,
Respondent.

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No. 3:16-CV-55-M-BH

Referred to U.S. Magistrate Judge

ORDER

Pursuant to *Special Order No. 3-251*, this case has been automatically referred for findings, conclusions and recommendation.

Before the Court is the petitioner's *Application to Proceed In Forma Pauperis*, received February 11, 2016 (doc. 7). As provided by 28 U.S.C. § 1915, the application is hereby **GRANTED**, and the petitioner may proceed *in forma pauperis* in this action.

At all times during this action, the petitioner must immediately advise the Court of any change of address and its effective date by filing a notice titled: "NOTICE TO THE COURT OF CHANGE OF ADDRESS". The notice should contain only information about the change of address and its effective date; it must not contain any motions for any other relief. **Failure to file a notice of change of address may result in the dismissal of the action for failure to prosecute.**

SO ORDERED this 2nd day of March, 2016.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ELLOYD JOHNSON
ID # 840854,
Petitioner,

vs.

WILLIAM STEPHENS, Director,
Texas Department of Criminal
Justice, Correctional Institutions Division,
Respondent.

No. 3:13-CV-2820-M-BH

ORDER

Pursuant to *Special Order No. 3-251*, this case has been automatically referred for findings, conclusions, and recommendation. Before the Court is the petitioner's *Leave to Bring in Third-Party Defendant under Rule 14(b) Fed. R. C. Proc.*, received December 22, 2015 (doc. 32).

I.

The petitioner, an inmate currently incarcerated in the Texas Department of Criminal Justice - Correctional Institutions Division (TDCJ-CID), filed a petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 to challenge his Dallas County conviction for delivery of a controlled substance. (*See* Petition (Pet.) at 2; *see also* www.tdcj.state.tx.us, search for petitioner).

After the petitioner pled not guilty, he was convicted of delivery of cocaine on August 7, 1998, in Cause No. F98-00897 in the 195th Judicial District Court of Dallas County, Texas, and sentenced to 99 years imprisonment. (Pet. at 2-3; *see also* www.tdcj.state.tx.us, search for petitioner). His conviction and sentence were affirmed on direct appeal. *Johnson v. State*, No. 05-98-1387-CR, 2000 WL 257804 (Tex. App.-Dallas March 9, 2000, pet. ref'd). He has since filed seven unsuccessful state applications for writ of habeas corpus. *See Ex parte Johnson*, 2013 WL 2118799 (Tex. Crim. App. May 15, 2013). Five attacked the same conviction as in this case.

On July 11, 2001, petitioner's first federal habeas petition was dismissed without prejudice for failure to exhaust state remedies. *Johnson v. Johnson*, No. 3:00-CV-2591-G (N.D. Tex. July 11, 2001). His second federal habeas petition was denied on its merits on June 11, 2002. *Johnson v.*

Cockrell, No. 3:01-CV-2267-M (N.D. Tex. June 11, 2002). Three subsequent federal petitions were transferred to the Fifth Circuit Court of Appeals as successive. *Johnson v. Dretke*, No. 3:04-CV-2602-D (N.D. Tex. May 31, 2006); *Johnson v. Quarterman*, No. 3:06-CV-1754-L (N.D. Tex. Oct. 31, 2006); *Johnson v. Thaler*, No. 3:09-CV-2109-M (N.D. Tex. Jan. 22, 2010). His petition in this case was also transferred to the Fifth Circuit as successive in September 2013. (See docs. 6, 8, 9.)

II.

The petitioner now seeks to join the state trial judge as a party in this long-closed federal habeas case. He contends the state judge had not taken the oath of office, his conviction and sentence should be vacated, and he should be released. Based on the relief he seeks, the petitioner's post-judgment motion is properly construed as another attempt to challenge his state conviction.

A habeas petition under 28 U.S.C. § 2254 is the appropriate vehicle to challenge a state court conviction on the grounds that the petitioner is in custody in violation of the Constitution or federal laws. See 28 U.S.C. § 2254(a); *Preiser v. Rodriguez*, 411 U.S. 475, 484-87 (1973). The motion is therefore construed as a § 2254 petition.¹ Accordingly, the Clerk's Office is **INSTRUCTED** to terminate the motion (doc. 32) in this habeas case, open a new § 2254 habeas case, file the motion (doc. 32) and a copy of this order in that new case, and directly assign the new case to Judge Barbara M.G. Lynn and Magistrate Judge Irma Carrillo Ramirez.

¹Courts may only consider federal habeas petitions under 28 U.S.C. § 2254 on grounds that the petitioner is in custody in violation of the Constitution or federal laws. See 28 U.S.C. § 2254(a); *Preiser v. Rodriguez*, 411 U.S. 475, 484-87 (1973). Because the petitioner seeks to challenge his conviction, and he may only raise habeas claims in a habeas case, the new action will proceed only as a habeas action under § 2254. If he wishes to seek non-habeas relief against the state judge, he must file a separate civil action under the appropriate statutes and pay the applicable filing fees. The Prison Litigation Reform Act (PLRA) requires that all prisoners who bring a civil action must pay the full filing fee, although the filing fee may be paid in installments where leave to proceed *in forma pauperis* is granted. See 28 U.S.C. § 1915(b)(1). As of May 1, 2013, a \$50 administrative fee will be assessed in addition to the \$350 filing fee, resulting in a total filing fee of \$400 for a civil action in which the plaintiff has not sought or been granted leave to proceed *in forma pauperis*. See District Court Miscellaneous Fee Schedule. Where a prisoner plaintiff has been granted leave to proceed *in forma pauperis*, only the \$350 filing fee will be deducted from the prisoner's account. See *id.* The \$50 administrative fee will not be deducted. *Id.*

SO ORDERED this 8th day of January, 2016.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

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

October 12, 2017

#840854
Mr. Elloyd Johnson
CID Polunsky Prison
3872 FM 350, S.
Livingston, TX 77351-0000

No. 16-11401 Elloyd Johnson v. Lorie Davis, Director
USDC No. 3:16-CV-55

Dear Mr. Johnson,

We received your motion for leave for entry under FRAP Rule 10(2) on appeal. In light of the court's order of February 14, 2017 denying reconsideration and the Court's order of January 1, 2017, we are taking no action on this motion.

The appeal is closed.

Sincerely,

LYLE W. CAYCE, Clerk

Claudia N. Farrington

By:

Claudia N. Farrington, Deputy Clerk
504-310-7706

AMENDED FILING TO REFLECT PRIOR
CHANGES REQUESTED

PROPER CHANGES TO PETITIONER-RELATOR CLAIMS APPEAR AT AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO PROCEED INFORMA PAUPERIS FOLLOWED BY PETITION AT PAGE(1) ONE: IN RE ELLOYD JOHNSON WITH "PERSONS AGAINST WHOM RELIEF IS SOUGHT": PAUL BANNER AND SOLICITOR GENERAL; AT PAGE (2) TWO, (4) FOUR QUESTIONS PRESENTED; PAGE 3, LIST OF PARTIES NOTICE AT COVER AND "RELATED CASES" THAT SUPPORT THE CLAIM WITH THE "CONTROLLING CASE" LAW, FOLLOWED BY PAGE (4) TABLE OF CONTENTS AND INDEX TO APPENDICES NEXT TO SUPPORT ALL JURISDICTIONAL STATE AND FEDERAL COURTS ... HAVE WAIVED RELIEF CONSIDERATION SOUGHT IN PETITIONER-RELATOR CLAIM.

AT PAGE 5, TABLE OF AUTHORITIES CITED STATUTES AND RULES UNDER (SCOTUS) RULES, AND PREVIOUS FILING IN THE COURTS WITH STATE OF TEXAS STATE GOVERNMENT 75.001 AND STATE LEGISLATURE § 552.028.

AT PAGE 6, FEDERAL COURT OPINIONS IN FEDERAL COURT APPEARS AT OPINIONS BELOW: AT PAGE 7, JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1254(1) ... STATE COURT DECISION IN STATE COURT APPEARS NEXT IN STATE COURTS WHERE ... JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. 1257(a); PAGE 8 AND 8-i, CONSTITUTIONAL STATUTORY PROVISIONS INVOLVED WITH IMMEDIATE RELEASE FROM CUSTODY; PAGE 9, STATEMENT OF CASE WHERE LOWER JURISDICTIONAL COURTS AND ... STATE AGENCY'S JURISDICTION THROUGH STATE LAW WAS ACKNOWLEDGE WITH DOCUMENTARY EVIDENCE. AND PAGE 9-i COMPLIANCE RULE UNDER (SCOTUS) RULE 20. 4(a) ; REASON FOR GRANTING PETITION FOR WRITS APPEAR AT PAGE 10 ON ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR ANY OTHER COURT; PAGE 11, CONCLUSION FOR IMMEDIATE RELEASE IS RELIEF SOUGHT ON COURT'S OWN ORDER.. WITH NOTICE OF AMENDED FILING.

A D E T E

RELIEF FORMAT PERSPECTIVE

(SCOTUS) DECISION ON DEC. 23, 2019 UNDER IN RE: ELLIOT JOHNSON, WHERE THE PRESENTMENT OF PREVIOUS CORRESPONDENCE IS NOT CLEAR WHEN CHANGES[?] REQUESTED[?] IS NEED TO REFLECT A RELATED CLAIM WHERE THE WRIT PERSPECTIVE HAVE NOT BEEN MET BY (SCOTUS)? "FAILURE TO REFLECT THE CHANGES REQUESTED IN PRIOR CORRESPONDENCE" WITHOUT A FORMAT IS QUESTIONABLE ON ITS FACE??

DOCUMENTARY FILED IN PRIOR CORRESPONDENCE SETS IN THE ADDITIONAL LITIGATION WHERE JUDGMENTS OF LOWER COURTS REFLECT A HISTORY OF HABEAS CORPUS AND MANDAMUS WITH PROHIBITION NOT CONSIDERED DUE TO THE FOUNDATION OF STATE AND FEDERAL LAW EXCLUDES A JUDGE NOT TAKEN HIS OATH OF OFFICE WHOM PRESIDES OVER JUDICIAL . . . PROCEEDINGS PROHIBITS SUCH JUDGE ACTIONS AND CONVICTION AND SENTENCE IS BY LAW NULL AND VOID THAT SUCH PROCEEDINGS HAVE NO FORCE BINDING IN POWER AND ACTIONS HAS NO VALIDITY TO STAND UNDER STATE AND FEDERAL LAW OF AMERICA.

(SCOTUS) CLERK DEC. 23, 2019 RESPONSE

ON "FAILURE TO REFLECT THE CHANGES REQUESTED IN PRIOR CORRESPONDENCE" IS ARGUMENTATIVE AT THE BURDEN (SCOTUS) INFLECT ON PETITIONER-RELATOR CLAIM WHEN VIEWING NON-STATUTE ISSUES TO BE MET... BY PETITIONER-RELATOR.

"THE PICK-AND-CHOOSE" METHOD BY STATE AND FEDERAL LAWS OF THE UNITED STATES . . . GOVERNMENT REQUIRES THE (SCOTUS) RULE 2D, 3(a) IS MET UNDER BOTH ALTERNATIVE FORM AT APPENDICES WHERE PETITIONER-RELATOR SEEKING BOTH ALTERNATIVELY . . . MANDAMUS AND PROHIBITION WHERE HABEAS CORPUS WAS INSTRUCTED BY THE STATE U.S. DISTRICT COURT.