

THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

DOCKET No: _____

Frank Joseph Schwindler,
Appellant,

v.

Shay Hatcher, Warden, et al.,
Appellees.

APPENDICES A-D

- A. 11th Circuit August 28, 2019 Decision
- B. 11th Circuit November 20, 2019 Rehearing Order
- C. Southern District of Georgia April 30, 2019 Order
- D. Southern District of Georgia May 15, 2019 Order

FRANK JOSEPH SCHWINDLER
GDC # 323208
PHILLIPS STATE PRISON
2909 WEST ROCK QUARRY ROAD
BUDFORD, GA 30519-4118

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-11693-A

FRANK JOSEPH SCHWINDLER,

Petitioner-Appellant,

versus

WARDEN,
WARDEN, PHILLIPS STATE PRISON,

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Georgia

Before: MARTIN, ROSENBAUM and BRANCH, Circuit Judges.

BY THE COURT:

The Appellee's motion to dismiss the appeal for lack of jurisdiction, which we construe from the response to the jurisdiction question, is GRANTED. Appellant Frank Schwindler filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the Northern District of Georgia. After several transfers of the case, the district court in the Southern District of Georgia stayed the case on May 4, 2018, pending the outcome of Schwindler's appeal in the state supreme court from his state postconviction proceedings. On May 24, 2018, Schwindler filed a self-styled motion pursuant to Federal Rule of Civil Procedure 60, seeking reconsideration of the district court's stay order. On April 1, 2019, the district court denied Schwindler's motion for

APPENDIX 'A'

reconsideration. Schwindler then filed the instant notice of appeal from the district court's April 1, 2019, order.

As an initial matter, we construe Schwindler's notice of appeal to appeal both the May 4, 2018, stay order and the April 1, 2019, order denying reconsideration because Schwindler expressed an intent to challenge both rulings and his notice of appeal is timely as to both. *See* Fed. R. App. P. 3(c)(1), (4); *Campbell v. Wainwright*, 726 F.2d 702, 704 (11th Cir. 1984); *see also* Fed. R. App. P. 4(a)(1)(A), (4)(A). However, we lack jurisdiction to review either order because we conclude that they are not final or immediately appealable. *See* 28 U.S.C. §§ 1291, 1292; *CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1327 (11th Cir. 2000) (stating that, to be appealable, an order must be final or fall into a specific class of interlocutory orders that are made appealable by statute or jurisprudential exception). The district court's orders did not end litigation on the merits and, instead, contemplated further habeas proceedings after the conclusion of Schwindler's appeal in state court. *See World Fuel Corp. v. Geithner*, 568 F.3d 1345, 1348 (11th Cir. 2009); *Broussard v. Lippman*, 643 F.2d 1131, 1133 (5th Cir. Unit A Apr. 1981) (stating that an order that contemplates further substantive proceedings in a case is not final and appealable).

The district court's stay order also does not qualify for immediate review under the "effectively out of court" doctrine because the stay was not immoderate and did not involve an indefinite period of delay. *See Miccosukee Tribe of Indians of Fla. v. S. Fla. Water Mgmt. Dist.*, 559 F.3d 1191, 1194 (11th Cir. 2009); *King v. Cessna Aircraft Co.*, 505 F.3d 1160, 1165-66 (11th Cir. 2007). Although we recognize that there had been considerable delay in Schwindler's federal and state proceedings, the district court's stay order was premised on the fact that progress had been made on the merits of Schwindler's state postconviction claims, and because

both parties have acknowledged that Schwindler's state appellate proceedings have concluded, the stay is presumably due to be lifted upon dismissal of this appeal. Therefore, Schwindler has not been placed "effectively out of court." *See King*, 505 F.3d at 1166-70.

Accordingly, this appeal is DISMISSED for lack of jurisdiction. Any pending motions are DENIED as moot.

IN THE UNITED STATES COURT OF APPEALS

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No. 19-11693-A

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versus

WARDEN,
WARDEN, PHILLIPS STATE PRISON,

Respondents-Appellees.

Appeal from the United States District Court
for the Southern District of Georgia

Before: MARTIN, ROSENBAUM and BRANCH, Circuit Judges.

BY THE COURT:

Appellant Frank Schwindler's motion for reconsideration of our August 28, 2019, order dismissing this appeal for lack of jurisdiction is DENIED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

FRANK JOSEPH SCHWINDLER,)
)
 Petitioner,)
)
v.)
)
P.O. AHMED HOLT, Warden,)
)
 Respondent.)

CV416-189

ORDER

Frank Joseph Schwindler has petitioned this Court for relief from his state-court judgment, pursuant to 28 U.S.C. § 2254. *See* doc. 1. After a somewhat convoluted procedural history, the case returned to this Court from the United States District Court for the Northern District of Georgia. Doc. 45. Given the pendency of state *habeas* proceedings, this Court held the petition in abeyance. *See* doc. 49 (Report and Recommendation), *adopted* doc. 50. After the case was stayed, petitioner filed motions to argue the propriety of the Northern District's transfer. *See* doc. 51. His motion was denied by the District Judge. Doc. 54. He has filed a notice of his appeal of that order to the United States Court of Appeals for the Eleventh Circuit. Doc. 56.

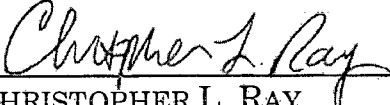
When he filed his notice of appeal, Schwindler also filed a motion requesting an extension to a deadline imposed when the Court held his petition in abeyance. Doc. 55. The Court directed him to file an amended petition within thirty days of the conclusion of his state proceeding. See doc. 54 at 4. His present motion indicates that the Georgia Supreme Court denied him a certificate of probable cause to appeal the denial of his habeas petition. See doc. 55 at 2. Given the pendency of his appeal to the Eleventh Circuit, he requests either that this case be held “in abeyance until such time as the appellate court considers his appeal,” or a thirty-day extension.¹

Normally the filing of a notice of appeal is an event of jurisdictional significance; it divests the district court of jurisdiction over a case and vests jurisdiction in the court of appeals. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). That transfer, however, may avoid aspects of the case not involved in the appeal. See *id.* Given Schwindler’s express goal of having his petition considered in the

¹ It is not clear when the Georgia Supreme Court denied him a certificate of probable cause, terminating his state proceeding and starting the time for him to file an amended petition. Thus, it is not clear when he proposes to submit his amended petition.

Northern District, the Court will **STAY** all deadlines in this case until his appeal is concluded. If the Court of Appeals determines that Schwindler's petition is properly before this Court, he must file his amended petition within thirty days of the disposition of his appeal.

SO ORDERED, this 30th day of April, 2019.



CHRISTOPHER L. RAY
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

FRANK JOSEPH SCHWINDLER,)

Petitioner,)

v.)

CV416-189

P.O. AHMED HOLT, Warden,)


Respondent.)

ORDER

The Court has stayed this *habeas* action to allow Petitioner to challenge the Northern District of Georgia's transfer to this Court. *See* doc. 57. In its Order, the Court did not dispose of Schwindler's pending motion to extend his deadline to amend his petition. *See* doc. 55. Since he is to file his amendment within thirty days of the disposition of his appeal, his request for additional time from the conclusion of his state *habeas* proceeding is moot. *See* doc. 57 at 3. The Clerk is, therefore,

DIRECTED to terminate the pending motion. Doc. 55

SO ORDERED, this 15th day of May, 2019.


CHRISTOPHER L. RAY
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

SUPREME COURT
UNITED STATES OF AMERICA

FRANK SCHWINDLER,
Petitioner pro se,

v.

Docket No. _____

SHAY HATCHER, WARDEN,
Respondent.

AFFIDAVIT OF MAILING

COMES NOW FRANK SCHWINDLER, petitioner pro se, and upon direct personal knowledge, having been first duly sworn, swears and certifies to the Court (For the third time - see page viii - dated April 12, 2020, and June 12, 2020) that I am again placing the within petition for writ of certiorari into the prison's legal mail system addressed to the Clerk of the Court on the date set forth below, and that the delay in returning this petition is due to the impact of Covid-19 on the operation of the postal service and Phillips State Prison. Copy of the petition is certified to have previously served upon counsel.

Frank Schwindler
Frank Schwindler; 323208/A-2
Phillips State Prison
2989 W. Rock Quarry Rd.
Buford, GA 30519-4118

Sworn to and subscribed before me this 21st day of August, 2020.

Monia J Trusty
Notary Public

My commission expires 6/2/2023

MONIA J TRUSTY
NOTARY PUBLIC
DeKalb County
State of Georgia
My Comm. Expires June 2, 2023