
APPENDIX

A

United States Court of Appeals
for the Fifth Circuit

No. 20-10985

United States Court of Appeals
Fifth Circuit

FILED

May 25, 2021

JACK ANTHONY CHATMAN,

Lyle W. Cayce
Clerk

Petitioner—Appellant,

versus

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:20-CV-156

Before COSTA, DUNCAN, and OLDHAM, *Circuit Judges*.

PER CURIAM:

We remanded this case to the district court because it was unclear from the record whether the petitioner, a pro se prisoner, placed his notice of appeal in the prison mail system on or before August 31, 2020, the last day for filing the notice. The district court ordered the respondent to file a verified copy of the applicable prisoner mail log showing petitioner's outgoing mail from July 15, 2020 to October 1, 2020.

No. 20-10985

After reviewing the evidence, the district court found that the notice of appeal was placed in the mail on September 14, 2020. When set by statute, the time limitation for filing a notice of appeal in a civil case is jurisdictional. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The lack of a timely notice mandates dismissal of the appeal. *United States v. Garcia-Machado*, 845 F.2d 492, 493 (5th Cir. 1988). Accordingly, the appeal is DISMISSED for want of jurisdiction. All pending motions are DENIED.

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

JACK ANTHONY CHATMAN,
TDCJ No. 2173980,

Petitioner,

V.

DIRECTOR, TDCJ-CID,

Respondent.

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No. 3:20-cv-156-L-BN

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

The Court dismissed Petitioner Jack Anthony Chatman's pro se application for a writ of habeas corpus under 28 U.S.C. § 2254 without prejudice on July 31, 2020. See Dkt. Nos. 28 & 29. Although the Court denied Chatman a certificate of appealability the same day, see Dkt. No. 28, Chatman filed a notice of appeal, stamped as filed in the United States Court of Appeals for the Fifth Circuit on September 17, 2020, see Dkt. No. 30. But, because Chatman did not date his notice of appeal, the Fifth Circuit has remanded his case:

A prisoner's pro se notice of appeal is timely filed if deposited in the institution's internal mail system on or before the last day for filing. See FED. R. APP. P. 4(c)(1). As it cannot be determined from the record in this case whether the petitioner delivered the notice of appeal to prison officials for mailing on or before August 31, 2020, the case must be remanded to the district court to make this determination. See *Thompson v. Montgomery*, 853 F.2d 287, 288 (5th Cir. 1988) (per curiam). Upon making this determination, the district court shall return the case to this court for further proceedings, or dismissal, as may be appropriate.

Dkt. No. 33.

And United States District Judge Sam A. Lindsay referred “this matter to the assigned United States Magistrate Judge to submit findings and recommendation to address the issue noted in the Fifth Circuit’s remand order.” Dkt. No. 34.

To facilitate the fact finding required by the remand order, the Court ordered Respondent to file verified portions of the applicable prisoner mail log, from July 15, 2020 through October 1, 2020, reflecting any outgoing mail deposited by Chatman and addressed either to the United States District Court for the Northern District of Texas or to the United States Court of Appeals for the Fifth Circuit. *See* Dkt. No. 35.

The Court extended Respondent’s deadline to make this filing, *see* Dkt. Nos. 43 & 44, but, recognizing the limited scope of the Fifth Circuit’s remand, the Court denied Chatman’s requests to appoint counsel and for an evidentiary hearing, *see* Dkt. Nos. 36-41.

Respondent filed a verified administrative record on January 27, 2021. *See* Dkt. No. 46. This filing reflects that, from July 15, 2020 through October 1, 2020, Chatman deposited mail on July 23, 2020 (addressed to the district court); on August 12, 2020 (addressed to the district court); on August 21, 2020 (addressed to the Dallas County District Clerk); and on September 14, 2020 (addressed to the Fifth Circuit). *See id.* And prison officials delivered each to the United States Postal Service the same day that Chatman delivered the mail to prison officials. *See id.*

The July 23 entry plausibly relates to the objections Chatman filed to the undersigned’s findings, conclusions, and recommendation as to the disposition of his habeas application, which objections the Court docketed on July 28, 2020. *See* Dkt.

No. 27. The August 12 entry does not correspond with a docket entry in this case or any other case that Chatman has filed in this district. But, given that the September 14 entry plausibly corresponds to the notice of appeal filed in the Fifth Circuit, the undersigned cannot find that the available record reflects that Chatman delivered the notice of appeal to prison officials on or before August 31, 2020.

The undersigned makes this finding in the context of the limited remand order. The issue for this Court to determine on remand is solely “whether the petitioner delivered the [undated] notice of appeal [stamped as filed on September 17, 2020] to prison officials for mailing on or before August 31, 2020.” Dkt. No. 33 at 2; compare *id.*, with, e.g., *Ewing v. Burke*, 792 F. App’x 340, 341 (5th Cir. 2020) (*per curiam*) (“This case is REMANDED to the district court for the limited purpose of making a determination whether Ewing’s notice of appeal was otherwise timely under Federal Rule of Appellate Procedure 4(c)(1), and, if the district court determines that the appeal was untimely, whether the deadline for filing the notice of appeal is extended under Federal Rule of Appellate Procedure 4(a)(5).”).

And the only record available to make this determination indicates that the notice of appeal was delivered to prison officials on September 14, 2020.

Chatman, moreover, fails to mention – in any of the multiple filings that he made in this Court since the Fifth Circuit’s remand order – that he deposited mail addressed to this Court on August 12, 2020. See Dkt. Nos. 36, 38, 39, 40, 42, & 45.

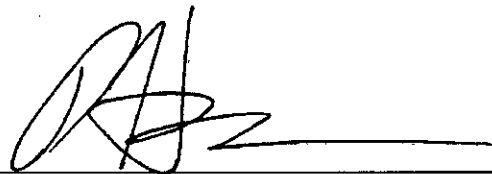
Recommendation

The Court should respond to the remand order by finding that the record

reflects that Petitioner Jack Anthony Chatman delivered the notice of appeal (stamped as filed in the United States Court of Appeals for the Fifth Circuit on September 17, 2020) to prison officials for mailing on September 14, 2020 and return this case to the Fifth Circuit.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. See *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: February 3, 2021

A handwritten signature in black ink, appearing to read 'D. Horan', is written over a horizontal line.

DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE



SHARON KELLER
PRESIDING JUDGE

MIKE KEASLER
BARBARA P. HERVEY
BERT RICHARDSON
KEVIN P. YEARY
DAVID NEWELL
MARY LOU KEEL
SCOTT WALKER
MICHELLE M. SLAUGHTER
JUDGES

COURT OF CRIMINAL APPEALS

P.O. BOX 12308, CAPITOL STATION
AUSTIN, TEXAS 78711

DEANA WILLIAMSON
CLERK
(512) 463-1551

SIAN SCHILHAB
GENERAL COUNSEL
(512) 463-1597

Friday, March 29, 2019

Jack Anthony Chatman Jr.
Neal Unit - TDC # 2173980
9055 Spur 591
Amarillo, TX 79107

Re: Chatman, Jack Anthony Jr.
CCA No. PD-0303-19, PD-0304-19 & PD-0305-19
COA No. 05-18-00020-CR, 05-18-00021-CR & 05-18-00022-CR
Trial Court Case No. F17-20589-V, F17-20590-V & F17-52715-V

This Court is in receipt of the Pro Se Petition for Discretionary Review in the above styled cause number. Records reflect an Opinion was issued by the 5th Court of Appeals on December 19, 2018, affirming the conviction; a motion for rehearing was not filed. Petition for Discretionary Review was due in the Court of Criminal Appeals on January 18, 2019. The 5th Court of Appeals issued mandate in the above styled cause on March 7, 2019.

The Appellant never filed an extension of time to file Petition for Discretionary Review and it is too late to do so now; *please see Texas Rules of Appellate Procedure 68.2(c)*. Since the 5th Court of Appeals has issued mandate in this case, **NO ACTION WILL BE TAKEN ON THIS PETITION**. The petition is being scanned and made a permanent part of the record in this Court.

Sincerely,

A handwritten signature in cursive script that reads "Deana Williamson".

Deana Williamson, Clerk

cc: State Prosecuting Attorney (Delivered Via E-Mail)
District Attorney Dallas County (Delivered Via E-Mail)
5th Court Of Appeals Clerk (Delivered Via E-Mail)

CLERK'S OFFICE
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS

I, DEANA WILLIAMSON, Clerk of the Court of Criminal Appeals, do hereby certify that as part of my duties I have care and custody of the records of the Court. I have searched the records and have found no 11.07 post-conviction writ of habeas corpus, under trial court cause numbers F-1720589-V, F-1720590-V & F-1752715-V, in the name of Jack Anthony Chatman.

WITNESS my hand and seal of said court, at my office in Austin, Texas, this the 22nd day of April, A. D. 2020.

Deana Williamson, Clerk



By: *Wale Abdulahi*

Deputy Clerk

APPENDIX B

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

JACK ANTHONY CHATMAN,
TDCJ No. 2173980,

Petitioner,

v.

LORIE DAVIS, Director
Texas Department of Criminal Justice
Correction Institutions Division,

Respondent.

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Civil Action No. **3:20-cv-156-L**

ORDER

On July 16, 2020, United States Magistrate Judge David Horan entered the Findings, Conclusions, and Recommendation of the United States Magistrate Judge (“Report”) (Doc. 26), recommending that the court: (1) dismiss without prejudice Petitioner Jack Anthony Chatman’s (“Petitioner”) Petition for a Writ of Habeas Corpus by a Person in State Custody (“Petition”) (Doc. 1), as it relates to his conviction for evading arrest, for lack of subject matter jurisdiction because this conviction was discharged prior to the filing of the Petition; (2) dismiss without prejudice the Petition, as it relates to his convictions for aggravated robbery and aggravated assault with a deadly weapon, for “failure to exhaust state court remedies in a procedurally correct manner prior to filing a Section 2254 application;” and (3) deny Petitioner’s Motion for Summary Judgment (Doc. 25).

On July 28, 2020, Petitioner filed his Objections to the Report (Doc. 27), objecting to the Report on several grounds. First, he asserts that Magistrate Judge Horan erred by recommending that the court dismiss his Petition with respect to the evading arrest conviction “because [he] is still in custody, [] was never paid under Gov. Codes 508.147 and 508,149 for [his] work[,] and [] never had [his] right to counsel fulfilled at trial or on appeal.” Pet.’s Obj. 1. Petitioner further

contends that but-for a violation of his constitutional rights, he would not have the evading arrest charge on his record.

Second, Petitioner objects to Magistrate Judge Horan's recommendation that the Petition should be dismissed with respect to his other convictions because the Report ignores his arguments that dismissal of these claims conflicts with the rulings in *Trevino v. Thaler*, 569 U.S. 413 (2013), and *Ex parte Garcia*, 486 S.W.3d 565 (Tex. Crim. App. 2016), that "prove[] that [r]elief is not possible in Texas on [h]abeas [r]elief[,] and that as an 'equitable remedy[,] [he] is allowed to file [for] the first time in federal court." *Id.* Petitioner further contends that *Trevino* supports his assertion that he is not able to seek relief in the state court "because of their faulty 'scheme' for addressing ineffective assistance of counsel claims." *Id.* at 2.

Petitioner also asserts that he asked for counsel in this matter and "this is why," as now he feels like there is "no help of [j]ustice on U.S. [s]oil." *Id.* (internal quotations omitted). Specifically, he contends that he could not have been expected to prepare and present his claims adequately, and that counsel would be able to do so appropriately for him to receive the relief he deserves. He cites *Ex parte Garcia* in support of his assertion that he should have had counsel to assist with his Petition. Petitioner also contends that the Magistrate Judge erred in denying his motion for summary judgment "because his claims are indisputably substantiated with his exhibits." *Id.*

Despite Petitioner's assertions, *Thaler* does nothing to add to his position and does not apply here because Magistrate Judge Horan did not recommend denial of Petitioner's Petition for any failure to present his ineffective assistance claim at the state court level. Instead, Magistrate Judge Horan recommends dismissal because (1) Petitioner's evading arrest charge was discharged before he filed this action; and (2) Petitioner has failed to exhaust all state court remedies prior to

seeking federal relief. Specifically, the Report notes that Petitioner has not presented any of his claims to the Texas Court of Criminal Appeals in a petition for discretionary review or an application for state post-conviction relief. A direct appeal is not the appropriate avenue for exhausting the required remedies to seek federal habeas relief. Thus, as Petitioner has failed to exhaust all state court remedies, the court cannot grant federal habeas relief. The court, therefore, **overrules** Petitioner's Objections on this basis.

With respect to Petitioner's objection regarding the appointment of counsel, the court determines that Petitioner was not harmed by the denial of his request for counsel. The Magistrate Judge denied without prejudice Petitioner's request for counsel (*see* doc. 15) but had the authority to revisit his request after a response to his Petition was filed. Magistrate Judge Horan never appointed counsel for Petitioner, and Petitioner did not renew his request. The court determined that the appointment of counsel was unnecessary at this stage, given that Magistrate Judge Horan recommended dismissal without prejudice on procedural grounds and not on the merits of the Petition. Additionally, Petitioner's objection to Magistrate Judge Horan's recommendation to deny his Motion for Summary Judgment is without merit, as he has not exhausted his state court remedies, and the motion is, therefore, premature. For these reasons, Plaintiff's Objections are also **overruled** on these bases.

Having reviewed the pleadings, file, record in this case, and Report, and having conducted a de novo review of the portions of the Report to which objections were made, the court determines that the findings and conclusions of the Magistrate Judge are correct, and **accepts** them as those of the court. Accordingly, the court **overrules** Petitioner's Objections (Doc. 27); and **dismisses without prejudice** Petitioner's Petition for a Writ of Habeas Corpus by a Person in State Custody (Doc. 1) for lack of subject matter jurisdiction with respect to his conviction for evading arrest,

and for failure to exhaust state court remedies in a procedurally correct manner with respect to his convictions for aggravated robbery and aggravated assault with a deadly weapon.¹ Additionally, the court **denies as moot** Petitioner's Motion for Summary Judgment (Doc. 25). As no issues remain, the court **dismisses this action**.

Considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings, and 28 U.S.C. § 2253(c), the court **denies** a certificate of appealability.² The court determines that Petitioner has failed to show: (1) that reasonable jurists would find this court's "assessment of the constitutional claims debatable or wrong;" or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In support of this determination, the court accepts and incorporates by reference the Report. In the event that Petitioner files a notice of appeal, he must pay the \$505 appellate filing fee or submit a motion to proceed *in forma pauperis* on appeal.

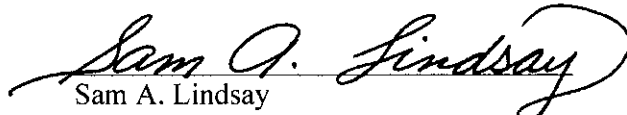
¹ Magistrate Judge Horan notes that Petitioner also failed to exhaust all state court remedies in a procedurally correct manner with respect to his evading arrest conviction.

² Rule 11 of the Rules Governing §§ 2254 and 2255 Cases provides as follows:

(a) **Certificate of Appealability.** The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) **Time to Appeal.** Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability

It is so ordered this 31st day of July, 2020.


Sam A. Lindsay
United States District Judge

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

May 25, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-10985 Chatman v. Lumpkin
USDC No. 3:20-CV-156

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Casey A. Sullivan, Deputy Clerk
504-310-7642

Mr. Jack Anthony Chatman
Ms. Karen S. Mitchell
Ms. Jennifer Wissinger