

Appendix A

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United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

July 23, 2021

No. 18-40936
Summary Calendar

Lyle W. Cayce
Clerk

ROBERT TRACY WARTERFIELD,

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 Eastern District of Texas
USDC No. 4:17-CV-330

Before HIGGINBOTHAM, JONES, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Robert Tracy Warterfield, Texas prisoner # 1829999, filed a 28 U.S.C. § 2254 application challenging his convictions for aggravated sexual assault of a child (two counts) and indecency with a child by contact (two counts).

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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No. 18-40936

As part of this pending habeas application, he also filed a purported application for injunctive relief, which sought to enjoin Texas officials in their interpretations of, and obligations under, a plea agreement from a prior case. According to Warterfield's pleadings, the alleged violations of this prior plea agreement helped prosecutors obtain his current convictions. The district court reconstrued the purported application for injunctive relief as a petition for a writ of mandamus, but it denied this reconstrued petition for lack of jurisdiction to grant the relief requested. Warterfield then filed the instant interlocutory appeal.

This court must consider the basis of its own jurisdiction, *sua sponte* if necessary. *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). For jurisdiction to exist, the court must have a live case or controversy before it at all times. *See United States v. Heredia-Holguin*, 823 F.3d 337, 340 (5th Cir. 2016) (en banc). A moot case presents no case or controversy. *See id.* "This court reviews questions of jurisdiction *de novo*, including [whether] a case or controversy has become moot." *Veasey v. Abbott*, 888 F.3d 792, 798 (5th Cir. 2018).

The district court now has denied the underlying § 2254 application as time-barred and dismissed the case. Warterfield's appeal from that denial now is pending in this court. We conclude that the district court's resolution of the underlying § 2254 application renders Warterfield's interlocutory appeal moot. Warterfield's renewed motion for appointment of counsel also is denied.

INTERLOCUTORY APPEAL DISMISSED AS MOOT;
MOTION FOR APPOINTMENT OF COUNSEL DENIED.

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Before HIGGINBOTHAM, JONES, and WILLETT, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the appeal is DISMISSED as moot.

Appendix B

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

ROBERT T. WARTERFIELD, #1829999 §
§
§
VS. § CIVIL ACTION NO. 4:17cv330
§
§
§
DIRECTOR, TDCJ-CID §

ORDER ADOPTING INITIAL REPORT AND RECOMMENDATION

The above-entitled and numbered civil action was referred to United States Magistrate Judge Christine A. Nowak. The Magistrate Judge issued an Initial Report and Recommendation (Dkt. #27), which contains proposed findings of fact and recommendations for the disposition of Petitioner's motion for injunctive relief (Dkt. #22). Petitioner filed objections (Dkt. #29).

In his motion for injunctive relief, which was construed as a petition for writ of mandamus, Petitioner asks the Court to order the State to perform contractual obligations owed to him and release him from custody. In his objections to the Report, Petitioner complains that his motion should not have been construed as a petition for writ of mandamus. The Magistrate Judge was correct in her assessment, however, in that the relief Petitioner seeks would be considered mandamus relief. The Court also notes that Petitioner's motion for injunctive relief seeks the same relief as that sought in the underlying habeas action. The proper procedure for seeking correction of a judgment is outlined in the *Rules Governing Section 2254 Cases in the United States District Courts*. The Court will consider Petitioner's § 2254 petition as soon as possible.

Further, Petitioner files a motion for certificate of appealability (Dkt. #30). Rule 11(a) of the *Rules Governing Section 2254 Cases in the United States District Courts* provides that the district

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court must issue or deny a certificate of appealability when it enters the final order adverse to the applicant. Final Judgment has not yet been issued in this case; thus, Petitioner's motion is premature.

Having made a *de novo* review of Petitioner's objections and found them to be without merit, the Court concludes that the findings and conclusions in the Initial Report and Recommendation are correct, and adopts the same as the findings and conclusions of this Court. It is therefore

ORDERED that Petitioner's motion for injunctive relief (Dkt. #22) is **DENIED**. It is further **ORDERED** that Petitioner's motion for certificate of appealability (Dkt. #30) is **DENIED**.

SIGNED this 12th day of September, 2018.



AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

Appendix C

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

ROBERT T. WARTERFIELD, #1829999

§

VS.

§

CIVIL ACTION NO. 4:17cv330

DIRECTOR, TDCJ-CID

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**INITIAL REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pro se Petitioner Robert T. Warterfield filed the above-styled and numbered petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred to the undersigned United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case pursuant to 28 U.S.C. § 636 and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to the United States Magistrate Judge.

BACKGROUND

Petitioner is challenging his Collin County conviction for two counts of aggravated sexual assault of a nine-year-old child and two counts of indecency with the same child by contact. Cause No. 416-80757-2011. In addition to listing numerous other issues in his federal petition, Petitioner complains that the State breached a previous plea agreement in his state proceedings. He subsequently filed an “Original Application for Injunctive Relief” (Dkt. #22) in the instant case. Although Petitioner titles his application as one for injunctive relief, he is actually asking this Court to issue a writ of mandamus. Specifically, Petitioner asks that this Court “mandate that Texas and her agent perform her contractual obligations pursuant to The Contract and release Warterfield from custody . . .” (Dkt. #22, p. 20). A pleading will be judged by its substance rather than its form or

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label and, if possible, it will be liberally construed to give effect to its averments. *United States v. Robinson*, 78 F.3d 172 (5th Cir. 1996). Accordingly, the Court construes Petitioner's application (Dkt. #22) as a petition for writ of mandamus.

Federal district courts are courts of limited statutory jurisdiction. *Dunn-McCampbell Royalty Interest, Inc. v. Nat'l Park Serv.*, 112 F.3d 1283, 1286 (5th Cir. 1997). The only federal statute concerning the authority to issue writs of mandamus on the federal district courts is 28 U.S.C. § 1361. That statute specifically provides that district courts have original jurisdiction of any action in mandamus to compel an officer or employee of the United States "or any agency thereof to perform a duty owed to the plaintiff." Petitioner is asking this Court to issue a writ of mandamus to a Texas state court, an agency of the State of Texas. The State of Texas is not a federal officer, agent, or employee, and is not subject to the statutory mandamus authority of this Court. Consequently, this Court lacks jurisdiction to entertain Petitioner's request for relief.

RECOMMENDATION

It is recommended that Petitioner's "Original Application for Injunctive Relief" (Dkt. #22), construed as a petition for writ of mandamus, be denied without prejudice for lack of jurisdiction.

Within fourteen (14) days after service of the magistrate judge's report, any party must serve and file specific written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C). 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 report 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.

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Failure to file specific, written objections will bar the party from appealing the unobjected-to factual findings and legal conclusions of the magistrate judge that are accepted by the district court, except upon grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superceded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten (10) to fourteen (14) days).

SIGNED this 6th day of August, 2018.



Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE

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