

No. 21-7850

In the Supreme Court of the United States

NAWAZ AHMED,

Petitioner,

v.

TIM SHOOP, Warden

Respondent.

*ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

BRIEF IN OPPOSITION

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CAPITAL CASE – NO EXECUTION DATE SET

QUESTION PRESENTED

Did the Sixth Circuit correctly hold that it lacked jurisdiction over this appeal?

LIST OF PARTIES

The Petitioner is Nawaz Ahmed, an inmate at the Chillicothe Correctional Institution.

The Respondent is Tim Shoop, the Warden of the Chillicothe Correctional Institution.

LIST OF DIRECTLY RELATED PROCEEDINGS

1. *State v. Ahmed*, 99-CR-192 (Ct. of Common Pleas, Belmont County, OH) (judgment entered February 2, 2001)
2. *State v. Ahmed*, 2001-871 (Ohio) (judgment entered August 25, 2004)
3. *Ahmed v. Ohio*, 04-8302 (U.S.) (certiorari denied March 28, 2005)
4. *Ahmed v. Ohio*, 05-6113 (U.S.) (certiorari denied Oct. 31, 2005)
5. *Ahmed v. Ohio*, 99-CA-192 (Ct. of Common Pleas, Belmont County, OH) (judgment entered March 8, 2005)
6. *State v. Ahmed*, 05-BE-15 (Ohio Ct. App., 7th District) (judgment entered December 28, 2006)
7. *State v. Ahmed*, 2007-216 (Ohio) (appeal denied May 16, 2007)
8. *Ahmed v. Warden*, 08-cv-493 (S.D. Ohio) (administratively closed November 18, 2010)
9. *Ahmed v. Houk*, 07-cv-658 (S.D. Ohio) (motion to reopen the time to file a notice of appeal denied January 6, 2022)
10. *Ahmed v. Houk*, 07-4881 (6th Cir.) (order denying rehearing en banc entered June 10, 2008)
11. *Ahmed v. Houk*, 09-3241 (6th Cir.) (order dismissing case as improperly transferred March 24, 2009)
12. *Ahmed v. Houk*, 15-3684 (6th Cir.) (order denying rehearing en banc entered November 12, 2015)
13. *Ahmed v. Sheldon*, 15-8912 (U.S.) (in forma paupers status and petition for a writ of certiorari dismissed May 23, 2016)
14. *Ahmed v. Houk*, 17-4481 (6th Cir.) (order that the case remain closed issued May 20, 2014)
15. *Ahmed v. Shoop*, 18-3292 (6th Cir.) (appeal denied September 27, 2018)
16. *Ahmed v. Shoop*, 18-9331 (U.S.) (certiorari denied October 7, 2019)
17. *Ahmed v. Shoop*, 18-9332 (U.S.) (petition for writ of mandamus denied October 7, 2019)

18. *Ahmed v. Shoop*, 21-3095 (6th Cir.) (appeal dismissed March 10, 2021)

19. *Ahmed v. Shoop*, 20-4153 (6th Cir.) (pending)

20. *Ahmed v. Shoop*, 20-4302 (6th Cir.) (this matter)

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INTRODUCTION

Nawaz Ahmed is a convicted murderer on Ohio's death row. He is also a serial abuser of this Court's docket. This case marks at least the sixth time that Ahmed, acting *pro se*, has petitioned this Court for writs of certiorari or mandamus. *In re Nawaz Ahmed*, No. 18-9332; *Ahmed v. Shoop*, 18-9331; *Ahmed v. Hershey*, No. 02-9018; *Ahmed v. Sargus*, No. 03-7512; *Ahmed v. Ohio*, No. 05-6113; *Ahmed v. Belmont County Court of Common Pleas of Ohio*, No. 12-9397. Each of Ahmed's prior *pro se* filings was meritless. This one is too. The Court should deny his request for review.

JURISDICTION

The District Court had jurisdiction over Ahmed's habeas case under 28 U.S.C. §2254(a). The Sixth Circuit lacked jurisdiction to hear his appeal in this case for the reasons laid out in its opinion. *See Ahmed v. Shoop*, No. 20-4302, 2021 WL 6197332, at *1 (6th Cir. July 30, 2021). This Court has jurisdiction to review Ahmed's petition under 28 U.S.C. §1254(1).

STATEMENT

Ahmed's petition stems from the same underlying proceedings as most of his previous petitions. This brief will incorporate, sometimes verbatim, portions of briefs filed in opposition to Ahmed's earlier filings.

1. Over two decades ago, a detective in Belmont County, Ohio responded to the St. Clairsville home of Dr. Lubaina Ahmed. *State v. Ahmed*, 103 Ohio St. 3d 27, 27–29 (2004). Lubaina was Ahmed's estranged wife. The detective discovered her lifeless body, along with the bodies of Abdul Bhatti (Lubaina's father), Ruhie Ahmed

(Lubaina's sister), and Nasira Ahmed (Lubaina's two-year-old niece). The murderer had slashed their throats and fractured their skulls. *Id.* at 27–30.

Another detective discovered Ahmed's work badge near the bodies. *Id.* at 29. And a forensic scientist at the Ohio Bureau of Criminal Identification and Investigation matched Ahmed's DNA profile to blood found at the crime scene. *Id.* at 30. Police discovered a motive, too: Lubaina initiated divorce proceedings a year before the murders. *Id.* at 27. Those proceedings boiled over into a hostile child-custody battle. The divorce court issued a restraining order, yet Ahmed continued to make harassing telephone calls to Lubaina. *Id.* The couple's final divorce hearing was scheduled for September 13, 1999, two days after the quadruple murder. *Id.* at 28.

The police arrested Ahmed on the evening of September 11 at John F. Kennedy Airport in New York. *Id.* at 29. He had a one-way ticket to Pakistan for a flight that was scheduled to depart within the hour. *Id.* Ahmed also had \$7,500 in traveler's checks, nearly \$7,000 in cash, his will, and a lacerated thumb. *Id.*

2. A grand jury indicted Ahmed on four counts of aggravated murder. *Id.* at 29. A jury convicted him on all counts and recommended that he be sentenced to death. *Id.* at 30. The trial court imposed the recommended sentence. *Id.* On direct appeal, the Supreme Court of Ohio unanimously affirmed the judgment and sentence. *Id.* at 58.

Ahmed sought reconsideration, which the Ohio Supreme Court denied. *State v. Ahmed*, 103 Ohio St. 3d 1496 (2004). He also filed two petitions for a writ of certiorari. An attorney representing Ahmed filed the first one in January 2005. *See*

Ahmed v. Ohio, No. 04-8302. Ahmed filed a second petition, *pro se*, in May of the same year. *See Ahmed v. Ohio*, No. 05-6113. When the Court denied both petitions, Ahmed returned to the state courts to seek postconviction relief. After a trial court denied each of his claims, an Ohio appellate court affirmed and the Ohio Supreme Court declined to hear his case. *State v. Ahmed*, 2006-Ohio-7069 (Ohio Ct. App. 2006); *State v. Ahmed*, 113 Ohio St. 3d 1513 (2007).

3. Ahmed sought federal habeas relief in the United States District Court for the Southern District of Ohio. That court denied Ahmed’s request for relief, and dismissed his case with prejudice, on September 21, 2020. *Ahmed v. Houk*, No. 2:07-CV-658, 2020 WL 5629622, at *30 (S.D. Ohio Sept. 21, 2020). Ahmed appealed, and that appeal remains pending. *See Ahmed v. Shoop*, No. 20-4153 (6th Cir.).

4. “After he appealed the judgment ..., Ahmed filed post-judgment motions that challenged the prior magistrate judge’s orders.” *Ahmed v. Shoop*, No. 20-4302, 2021 WL 6197332, at *1 (6th Cir. July 30, 2021). One such document was entitled “Motion to Set Aside the Order (ECF No. 159, 163) Made in Lack of Jurisdiction, Authority and/or Objections to Magistrate Judge Order (159 & 163) to Strike the Motion for Substitution of Counsel filed 10/7/2020 (ECF No. 169).” Order Striking Motion, R.170, PageID#10952. (All record citations refer to the District Court record, available through PACER.) Another—which Ahmed sent to the district-court judge in the form of correspondence—bore a similar caption: “Motion to Set Aside the Order (ECF No. 159, 163) made in lack of jurisdiction, athrity [sic] andor [sic] Objections to Magistrte [sic] Judge Order (159 & 163) to strike the motion for substitution of

counsel.” Decision and Order Striking *Pro Se* Filing, R.173, PageID#10977. The District Court referred the filings to the magistrate. Order, R.172, PageID#10976. And the magistrate struck both. He determined both motions were improper because they were not signed by Ahmed’s counsel, but rather filed *pro se*.

5. Ahmed appealed the magistrate’s denials to the Sixth Circuit. *See* Order Striking Motion, R.170, PageID#10952; Decision and Order Striking *Pro Se* Filing, R.173, PageID#10977. He also appealed the District Court’s referral order. *See* Order, R.172, PageID#10976.

The Sixth Circuit *sua sponte* determined that it lacked jurisdiction to hear the appeal and dismissed in an unpublished order. It explained that the “order of a magistrate judge is not appealable ... unless the magistrate judge is given plenary jurisdiction pursuant to 28 U.S.C. § 636(c)(1).” *Ahmed*, 2021 WL 6197332 at *1 (citing *McQueen v. Beecher Cmty. Schs.*, 433 F.3d 460, 471–72 (6th Cir. 2006)). The magistrate had received no such authority. The District Court’s referral order was not appealable, either. *Id.* (citing *Bridgeport Guardians, Inc. v. Delmonte*, 537 F.3d 214, 221 (2d Cir. 2008) & *N. Telecom, Inc., v. Appleton*, 1990 WL 61172, at *1 (6th Cir. May 10, 1990)). Because Ahmed’s appeal was not “taken from an appealable order,” the Sixth Circuit lacked jurisdiction to decide it. *Id.*

6. After trying and failing to win *en banc* review, Ahmed timely petitioned this Court for a writ of certiorari.

REASONS FOR DENYING THE WRIT

The Court should deny Ahmed’s petition, which seeks factbound error correction of an unpublished order that contains no error.

A. The Sixth Circuit lacked any power to award Ahmed the relief he sought.

Ahmed attempted to appeal three orders. Two of those orders were entered by the magistrate judge. Both strike *pro se* filings on the ground that Ahmed was represented by counsel. *See* Order Striking Motion, R.170, PageID#10952; Decision and Order Striking *Pro Se* Filing, R.173, PageID#10977. The District Court itself entered the third order, which referred certain matters to the magistrate judge. Order, R.172, PageID#10976. None of these orders was properly before the Sixth Circuit. That court correctly refused to hear Ahmed’s appeal. *Ahmed*, 2021 WL 6197332 at *1.

1. Consider first the orders entered by the magistrate judge. “The jurisdiction of the Courts of Appeals exists only insofar as it is provided by statute.” *United States v. Haley*, 541 F.2d 678, 678 (8th Cir. 1974). And by statute, the circuits’ appellate authority is generally limited to appeals from “final decisions *of the district courts of the United States*.” 28 U.S.C. §1291 (emphasis added). Magistrate judges’ orders are not typically decisions of the district court; to the contrary, parties may appeal magistrate-issued orders to the district court. For that reason, numerous circuits have held that appellate courts lack jurisdiction to review magistrate orders unless the party first sought the district court’s review of the magistrate’s order. As best the Warden can tell, the circuits unanimously agree that appellate courts lack the power—with an exception addressed momentarily—to hear appeals of magistrate orders. *See, e.g., United States v. O’Laughlin*, 31 F.4th 1042, 1044 (8th Cir. 2022); *Haley*, 541 F.2d at 678; *E2E Processing, Inc. v. Cabela’s Inc.*, No. 2017-1273, 2017 WL 9538364, at *1 (Fed. Cir. Jan. 25, 2017); *Dewey v. Volkswagen Aktiengesellschaft*, 681

F.3d 170, 180 (3d Cir. 2012); *United States v. Schultz*, 565 F.3d 1353, 1359 (11th Cir. 2009); *McQueen v. Beecher Cmty. Schs.*, 433 F.3d 460, 471–72 (6th Cir. 2006); *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996); *CNPq-Conselho Nacional de Desenvolvimento Cientifico e Tecnologico v. Inter-Trade, Inc.*, 50 F.3d 56, 57 (D.C. Cir. 1995) (*per curiam*); *Pagano v. Frank*, 983 F.2d 343, 346 (1st Cir. 1993); *Colburn v. Bunge Towing, Inc.*, 883 F.2d 372, 379 (5th Cir. 1989). Though courts sometimes discuss the rule in waiver terms, not in jurisdictional terms, *see, e.g., Frontier Ref., Inc. v. Gorman-Rupp Co.*, 136 F.3d 695, 706 (10th Cir. 1998), the difference has no bearing on the outcome of this case. Ahmed has not sought review of that issue, and he has not challenged the Sixth Circuit’s ruling on the ground that it failed to forgive any waiver.

Now for the exception to the rule. Parties may appeal a magistrate judge’s order directly to a circuit court in cases where the magistrate was given plenary jurisdiction under 28 U.S.C. §636(c)(1). *See* §636(c)(3); *McQueen*, 433 F.3d at 472. But it is undisputed that the magistrate judge in this case was not given plenary jurisdiction. Instead, the magistrate judge derived the authority to handle these post-judgment matters from the catchall provision of 28 U.S.C. §636(b)(3), under which a “magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.” Because Ahmed never sought district-court review of the magistrate’s orders, the Sixth Circuit lacked jurisdiction over his appeal from those orders.

2. Now consider the District Court’s order referring Ahmed’s motions to the magistrate. Order, R.172, PageID#10976. While that order qualifies as a “decision[]” by a District Court, it is not a “*final* decision[].” §1291 (emphasis added). Because appellate jurisdiction is generally limited to final orders, *id.*, such orders are not immediately appealable, as every court to have considered the issue has held. *Bridgeport Guardians, Inc. v. Delmonte*, 537 F.3d 214, 221 (2d Cir. 2008); *In re Pruitt*, 910 F.2d 1160, 1166 (3d Cir. 1990); *In re Dalton*, 733 F.2d 710, 714 (10th Cir. 1984); *Loral Corp. v. McDonnell Douglas Corp.*, 558 F.2d 1130, 1131–32 (2d Cir. 1977); *In re Powelson*, 878 F.2d 976, 979 (7th Cir. 1989); *In re King Mem. Hosp., Inc.*, 767 F.2d 1508, 1510 (11th Cir. 1985). While the collateral-order doctrine allows appellate courts to hear some interlocutory appeals, *see Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949), Ahmed has not explained how his appeal fits that doctrine. Nor has he identified any other final decision on which the Sixth Circuit might have relied to find appellate jurisdiction.

In any event, parties must raise objections to a district court’s referral “at the time of reference or soon thereafter,” as waiting until after the magistrate has issued a report frustrates the judicial economy that magistrate referrals exist to promote. *Hill v. Duriron Co.*, 656 F.2d 1208, 1213 (6th Cir. 1981); *Cruz v. Hauck*, 515 F.2d 322, 331 (5th Cir. 1975); *Burlington N. R.R. v. Dep’t of Revenue*, 934 F.2d 1064, 1069 (9th Cir. 1991). Here, Ahmed waived his right to object to the referral by waiting to do so until after the magistrate rendered decisions on Ahmed’s motions.

B. Ahmed offers no good reason to hear his case.

Ahmed's arguments for granting certiorari all fail. At times, he makes arguments regarding his right to counsel. *See* Petn.21–23. Those arguments have no bearing on the dispositive jurisdictional issues. Ahmed's jurisdictional arguments consist primarily of block quotes and repeated assertions that the Sixth Circuit should have consolidated this appeal with his merits appeal. The block quotes do not reveal any error on the Sixth Circuit's part. And Ahmed's consolidation arguments fare no better. First, consolidating Ahmed's appeal below with his appeal of the earlier-issued merits judgment would not have cured the jurisdictional flaws the Sixth Circuit identified. In any event, the circuit courts have discretion to consolidate appeals. *See* Fed. R. App. P. 3(b)(2). Ahmed identifies no reason why the Sixth Circuit's failure to consolidate constituted an abuse of discretion.

CONCLUSION

This Court should deny Ahmed's petition for a writ of certiorari.

Respectfully submitted,

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