

United States Court of Appeals
for the Fifth Circuit

No. 20-20511

RICHARD VINCENT LETIZIA,

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 Southern District of Texas
USDC No. 4:19-CV-2834

ON PETITION FOR REHEARING

Before SOUTHWICK, GRAVES, and COSTA, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 25, 2022

No. 20-20511
Summary Calendar

Lyle W. Cayce
Clerk

RICHARD VINCENT LETIZIA,

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 Southern District of Texas
USDC No. 4:19-CV-2834

Before SOUTHWICK, GRAVES, and COSTA, *Circuit Judges.*

PER CURIAM:*

Richard Vincent Letizia, Florida DOC # K69277, has applied for leave to proceed in forma pauperis (IFP) for an appeal from the dismissal of his application for a writ of habeas corpus challenging his confinement under a

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

governor's warrant for extradition to Florida. The district court determined that the habeas application was moot.

By moving this court for leave to proceed IFP, Letizia is challenging the district court's determination that his appeal is not taken in good faith. *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). A motion for leave to proceed IFP on appeal "must be directed solely to the trial court's reasons for the certification decision." *Id.* This court's inquiry into good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citations omitted).

Letizia argues the merits of his constitutional claims only, and he makes no argument with respect to the district court's determination that those claims have been mooted by his extradition to Florida. Letizia has not shown that his appeal involves a nonfrivolous issue. *See Baugh*, 117 F.3d at 202; *Howard*, 707 F.2d at 220. The motion for leave to proceed IFP on appeal is DENIED, and the appeal is DISMISSED AS FRIVOLOUS. *See* 5TH CIR. R. 42.2; *Baugh*, 117 F.3d at 202 n.24.

ENTERED

June 26, 2020

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS *David J. Bradley, Clerk*

Richard Vincent Letizia,
Petitioner,

V.

Lorie Davis,
Director, Texas Department
of Criminal Justice, Correctional
Institutions Division,
Respondent.

卷之三

Civil Action H-19-2834

APPENDIX B

Memorandum and Recommendation

Vincent Letizia has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 challenging a conviction and related extradition entered against him in the State of Florida. (D.E. 1, 15.) Respondent moved to dismiss his petition. (D.E. 16.) The court recommends that Respondent's motion be granted, and Letizia's petition be dismissed with prejudice as moot pursuant to Rule 4 of the Rules Governing Section 2254 Cases.

Letizia filed his petition while he was in custody of the Harris County Jail. (D.E. 1.) The Court previously listed Lorie Davis as the respondent in her role as Director of the Texas Department of Criminal Justice— Correctional Institutions Division. She has filed a motion to dismiss, noting that she is not the proper respondent for purposes of Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts. (D.E. 16.) Because the petitioner was in custody of the State of Texas in the Harris County Jail when he filed the petition, the court recommends that Respondent's motion be granted. The court construes the Harris County District Attorney's Office as the proper respondent for further proceedings in this case.

In his petition, Letizia challenges the validity of the governor's warrant issued by the State of Texas pursuant to the Florida extradition order, arguing that the documentation is "invalid" and that he is not the person identified in those documents (D.E. 1, 15). Letizia previously filed a challenge in Texas state court, objecting to his arrest and detention by Harris County pursuant to the Florida extradition order, but his efforts were of no avail. *See Ex parte Letizia*, No. 01-16-00808-CR, 2019 WL 610719 (Tex. App.—Houston [1st Dist.] Feb. 2019, pet. ref'd). As a result, Letizia has been extradited and he is now in custody at a prison facility located in Florida. (D.E. 7, 11.)

A case becomes moot and no longer presents an actual case or controversy for purposes of subject matter jurisdiction under Article III of the United States Constitution "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Already, LLC v Nike, Inc.*, 568 U.S. 85, 91 (2013) (citation and internal quotation marks omitted). The Fifth Circuit has recognized that "[o]nce a fugitive has been brought within custody of the demanding state, legality of extradition is no longer proper subject of any legal attack by him." *Siegel v. Edwards*, 566 F.2d 958, 960 (5th Cir. 1978) (per curiam) (citation omitted).

Letizia has been extradited and brought within custody of Florida. (D.E. 7, 11.) His petition is now moot. *See Siegel*, 566 F.2d at 960; *see also Edwards v. Bowles*, 109 F. App'x 704, at *1 (5th Cir. 2004) (per curiam) (dismissing an appeal in a habeas proceeding because once the petitioner was extradited there was no relief the court could grant).

For the reasons stated above, the court recommends that Respondent's motion to dismiss (D.E. 16) be granted, and Letizia's petition for writ of habeas corpus (D.E. 1) be denied with prejudice as moot. Because reasonable jurists would not find the court's assessment of Letizia's claims debatable or wrong, the court

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