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IN THE  
SUPREME COURT OF THE UNITED STATES

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NAWAZ AHMED – PETITIONER

Vs.

TIM SHOOP, WARDEN, RESPONDENT

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JOINT APPENDIX

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NAWAZ AHMED,  
A404511,  
Prisoner, Pro Se, Petitioner,  
Chillicothe Correctional Institute,  
P.O.Box 5500  
Chillicothe, OHIO 45601  
May 2nd, 2023

# JOINT DIGITAL APPENDIX

## INDEX TO APPENDICES

Appendix “A”, Nawaz Ahmed v. Shoop, 2023 U.S. App. LEXIS 2816 (6th Cir., Feb.03,2023)

Appendix “B”, Ahmed v. Shoop, 2022 U.S. App. LEXIS 31469(6<sup>th</sup> Cir., Nov.14,2022).



NOT RECOMMENDED FOR PUBLICATION

No. 22-3039

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Nov 14, 2022  
DEBORAH S. HUNT, Clerk

NAWAZ AHMED,

Petitioner-Appellant,

v.

TIM SHOOP, Warden,

Respondent-Appellee.

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)  
) ON APPEAL FROM THE UNITED  
) STATES DISTRICT COURT FOR  
) THE SOUTHERN DISTRICT OF  
) OHIO  
)  
)  
)

ORDER

Before: BOGGS, BUSH, and LARSEN, Circuit Judges.

Nawaz Ahmed, a prisoner sentenced to death by the State of Ohio, filed a habeas corpus action pursuant to 28 U.S.C. § 2254. On September 21, 2020, the district court entered its judgment denying Ahmed's habeas petition. On May 7, 2021, the district court denied Ahmed's motion to alter or amend the judgment. Ahmed timely appealed that decision and the underlying judgment through counsel (No. 21-3542). The appeal is still pending.

In June 2021, Ahmed filed a pro se motion to strike the notice of appeal filed by his attorneys in No. 21-3542. The district court denied the motion by order entered on September 7, 2021. In December 2021, Ahmed filed a pro se motion to reopen the time to appeal the September 7, 2021, order. The district court denied the motion to reopen on January 6, 2022. On January 12,


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2022, Ahmed filed a pro se notice of appeal from the September 7, 2021, order denying his motion to strike and the January 6, 2022, order denying his motion to reopen.

The appeal is **DISMISSED** to the extent Ahmed appeals the September 7, 2021, order. As stated previously, the district court denied Ahmed's motion to reopen the time to appeal the September 7 order. The statutory requirement that a notice of appeal be filed within thirty days of entry of a judgment or order, *see* 28 U.S.C. § 2107(a), is a mandatory jurisdictional prerequisite that this court may not waive or alter, *see Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). Only issues regarding the January 6, 2022, order denying Ahmed's motion to reopen the time to appeal the September 7 order may be raised in this appeal.

Service

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT COLUMBUS**

NAWAZ AHMED,

Petitioner,

-vs.-

MARC C. HOUK, Warden,

Respondent

Case No. 2:07-cv-658

District Judge Michael H. Watson  
Magistrate Judge Michael R. Merz

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**REPORT AND RECOMMENDATIONS**

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This capital habeas corpus case is before the Court on Petitioner’s Motion to Reopen the Time to File a Notice of Appeal (ECF No. 204). On September 21, 2020, the Court entered its Opinion and Order dismissing all claims and denying a certificate of appealability (“Opinion,” ECF No. 156; Judgment, ECF No. 157). Petitioner through counsel filed a Motion to Amend the Judgment under Fed.R.Civ.P. 59(e)(ECF No. 160) which District Judge Watson denied, on the Magistrate Judge’s recommendation, on May 7, 2021 (ECF No. 194). Petitioner timely appealed that decision and the underlying judgment through counsel (ECF No. 195); that appeal has been assigned Sixth Circuit Case No. 21-3542 (ECF No. 197). So far as this Court’s docket shows, that case remains pending in the Sixth Circuit.

A motion to reopen the time for appeal is a post-judgment motion deemed referred to a Magistrate Judge under 28 U.S.C. § 636(b)(3) and requiring a report and recommended disposition.

### **Petitioner's Instant Motion**

On September 7, 2021, Judge Watson overruled Petitioner's *pro se* Objections to the Magistrate Judge's Order striking Petitioner's *pro se* Motion to Strike the Notice of Appeal filed on his behalf by counsel (ECF Nos. 198, 199, 203). Petitioner, proceeding *pro se*, claims he is entitled to reopening of the time for appeal because the Clerk failed to serve him within twenty-one days of entry of Judge Watson's order and his counsel also failed to serve him within twenty-one days of entry, both of which he claims is commanded by Fed.R.Civ.P. 77(d)(ECF No. 203, PageID 11203).

Petitioner admits that he eventually – on November 30, 2021 – received copies of ECF No. 203 from both the Clerk and his counsel (ECF No. 204, PageID 11266). He claims his Motion to Reopen is timely because he deposited in the prison mailing system on December 8, 2021<sup>1</sup>. *Id.* at PageID 11269.

### **Analysis**

Fed.R.Civ.P. 77(d)(1) provides that the clerk must immediately serve a copy of any order or judgment “on each party who is not in default for failing to appear.” Under Fed.R.Civ.P. 5(b)(1), service on a party represented by an attorney is to be made on the attorney. Under Fed.R.Civ.P. 5(b)(2)(E), service may be made on a registered user of the Court's electronic filing system by filing the document in that system. Petitioner is represented by appointed counsel in

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<sup>1</sup> The Magistrate Judge reads the date as December 8, 2021, but the numeral in question has been overwritten. Ahmed claims at the same place that he executed the Motion on November 8, 2021, but that is plainly wrong, since he claims he did not receive Judge Watson's Order until November 30, 2021.

this case, Keith Yeazel and Adele Shank, both of whom are registered users of the CM/ECF system. The Clerk filed Judge Watson's Order in the CM/ECF system on September 7, 2021, thereby making effective service on Petitioner. The Clerk is under no duty to provide Petitioner with a separate copy of orders filed in the case and has not received notice of non-receipt by either attorney.

Under Fed.R.Civ.P. 77(d)(2), a party's time to appeal is not affected by lack of notice except as provided in Fed. R. App. P. 4(a)(6). That appellate rule is not applicable because Petitioner did receive notice of the order within twenty-one days of its entry, to wit, on the same day through the CM/ECF system.

Because Petitioner did receive notice of the Order sought to be appealed, his Motion to Reopen should be denied. The Magistrate Judge offers no opinion on whether the Order is appealable apart from the pending appeal from the final judgment or whether there would be any merit to such an appeal, especially since Petitioner has not suggested what appealable issues he would raise.

December 13, 2021.

s/ *Michael R. Merz*  
United States Magistrate Judge



### **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. #

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**NAWAZ AHMED,**

**Petitioner,**

**v.**

**MARK C. HOUK,**

**Respondent.**

**Case No. 2:07-cv-658**

**Judge Michael H. Watson**


**Magistrate Judge Merz**

**ORDER**

On December 13, 2021, the Magistrate Judge assigned to this capital habeas corpus case issued a Report and Recommendations ("R&R") recommending the Court deny Petitioner's *pro se* motion to reopen the time to file a notice of appeal. ECF No. 205. The R&R advised Petitioner of his rights to object to the same and that a failure to timely object would forfeit rights on appeal. *Id.* at 4. Petitioner has not filed timely objections to the R&R.

Accordingly, the Court **ADOPTS** the R&R, ECF No. 205. Petitioner's motion to reopen the time to file a notice of appeal, ECF No. 204, is **DENIED**.

**IT IS SO ORDERED.**

  
**MICHAEL H. WATSON, JUDGE  
UNITED STATES DISTRICT COURT**