

United States Court of Appeals
for the Fifth Circuit

No. 22-40251
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 18, 2023

Lyle W. Cayce
Clerk

DONALD FOSTER,

Plaintiff—Appellant,

versus

BILLY JACKSON, *Assistant Warden*; JODY VINCENT, *Major*; OFFICER
MCGALA; OFFICER DUFF,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:20-CV-166

Before KING, JONES, and SMITH, *Circuit Judges.*

PER CURIAM:*

Donald Foster, Texas prisoner # 1038609, filed a 42 U.S.C. § 1983 action against various prison officials at the Polunsky Unit, alleging that they were depriving him of his personal property, exposing him to extreme heat, and discriminating against him based on his race. He moved the district court to grant him a temporary restraining order (TRO) against the officials. The

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 22-40251

district court accepted the magistrate judge's recommendation to deny the TRO motion as moot because the Texas Department of Criminal Justice's website reflected that Foster was no longer housed at the Polunsky Unit. Foster now appeals the denial and moves for leave to proceed in forma pauperis (IFP) on appeal.

Our jurisdiction is limited to appeals from final decisions of the district courts. 28 U.S.C. § 1291. Certain interlocutory orders pertaining to injunctions are immediately appealable under 28 U.S.C. § 1292. However, we do not have appellate jurisdiction over the denial of an application for a TRO because it does not qualify as an "injunction" under § 1292(a)(1). *Matter of Lieb*, 915 F.2d 180, 183 (5th Cir. 1990) (internal quotation marks omitted).

Accordingly, the appeal is DISMISSED, and Foster's IFP motion is DENIED AS UNNECESSARY. Foster is reminded that, because he has accumulated at least three strikes under 28 U.S.C. § 1915(g), he is barred from proceeding IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. *See* § 1915(g).

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

March 23, 2023

#1038609
Mr. Donald Foster
CID J. Dale Wainwright Unit
2665 Prison Road 1
Lovelady, TX 75851-0000

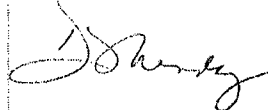
No. 22-40251 Foster v. Jackson
USDC No. 9:20-CV-166

Dear Mr. Foster,

We received your "Motion for Extension of Time to File a Writ of Certiorari." No action will be taken on your motion as same must be both captioned and filed directly with the United States Supreme Court.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Donna L. Mendez, Deputy Clerk
504-310-7677

NO. 22-10251

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DONALD FOSTER, PRO SE
PLAINTIFF-APPELLANT
v
BILLY JACKSON
RESPONDENT-APPEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS LUFKIN DIVISION

CIVIL ACTION NO. 9:20-cv-1160
HONORABLE RON CLARK
PRESIDING JUDGE

APPELLANT'S MOTION FOR EXTENSION OF TIME TO FILE A WRIT OF CERTIORARI

TO THE HONORABLE COURT OR JUDGE(S) THEREIN:

COMES NOW DONALD FOSTER, APPELLANT IN THE ABOVE STYLED NUMBERED CAUSE AND MOVES THIS COURT TO BOTH FED. R. APP. PROCEDURE & SUPREME COURT RULES, SUPRA, FOR AN EXTENSION OF TIME TO FILE A WRIT OF CERTIORARI AND SHOWS AS FOLLOWS:

APPELLANT CONTENDS THAT ADDITIONAL TIME IS NEEDED TO PROPERLY RESEARCH FIND THE PROPER ARGUMENT THAT IS MERITICUS WITHIN A WRIT OF CERTIORARI AND A SUPPORTING ARGUMENT IN THIS APPEAL PROCESS. IT IS NECESSARY THAT APPELLANT BE GIVEN ADDITIONAL TIME BASED IN HIS SITUATION.

APPELLANT IS PRESENTLY HOUSED IN RESTRICTED HOUSING, WHERE HE IS NOT ALLOWED OUT OF HIS CELL FOR A MEDICAL APPOINTMENT OR SHOWER, AND NOT ALLOWED DIRECT ACCESS TO THE LAW LIBRARY, DENIED ANY ASSISTANCE NOR APPOINTED AN ATTORNEY BY THE COURTS.

APPELLANT IS REQUESTED, THROUGH AN INTERNAL BOOK TABLE AND DELIVERY REQUESTS IN ORDER TO RECEIVE PHOTOCOPIES OR CASE LAW, RULES, CODES AND OTHER LEGAL REQUESTS FROM SECURITY PERSONNEL WHO ARE NOT VERSED IN LEGAL ASSISTANCE OF ANY FORM, YET ALLOWED TO ISSUE MY REQUEST(S) PAPER-WORK.

APPELLANT WAS RECENTLY MADE AWARE THAT HE HAD TO REQUEST FUNDING FROM THE SUPREME COURT CLERK IN ORDER TO FILE A WRIT OF CERTIORARI AND FINALLY CUT HIS REQUEST ABOUT A WEEK AGO.

DUE TO APPELLANT'S LIMITED ABILITY AT LITIGATING AND NO FORM OF ASSISTANCE IN SPAYING THE DUES AS WELL AS MAKING COPIES, APPELLANT NEEDS ADDITIONAL TIME TO PRESENT THE WRIT OF CERTIORARI TO THIS COURT OF APPEALS.

THIS IS APPELLANT'S FIRST REQUEST FOR AN EXTENSION OF TIME IN THIS APPEAL PROCESS, WHEREIN, APPELLANT IS NOT A MYPHOM OF THE LAW. THIS REQUEST IS NOT DESIGNED TO DELAY THIS COURT OR HARM THE ADVERSE PARTY, BUT TO ADDRESS THE COURT PROPERLY.

APPELLANT PROPECTFULLY REQUEST AN EXTENSION UP TO THIRTY (30) DAYS TO FILE THE WRIT OF CERTIORARI AND BRIEF.

WHEREFORE, APPELLANT REQUEST AN EXTENSION FOR THIRTY (30) DAY BE GRANTED.

RESPECTFULLY,
DONALD FOSTER

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DECLARATION

I, DONALD FOSTER, DECLAIMANT, BEING DULY SWORN, DEPOSES AND SAYS: I AM THE
DECLAMANT IN THIS DECLARATION AND OF A LAWFUL AGE, SOUND MIND AND BODY. I
MAKE THIS DECLARATION WITHOUT BEING COERCIONED INTO DOING SO.

DECLAMANT NEEDS ADDITIONAL TIME DUE TO HIS PRESENT SITUATION, BEING HOUSED
IN RESTRICTED HOUSING WHERE HE IS CONFINED TO A CELL AT THE LEAST 22- HOURS A
DAY, DECLAMANT DO NOT HAVE DIRECT ACCESS TO THE LAW LIBRARY AND RECEIVE PHOTO-
COPIES OF CASELAW, RULES, BOOKS AND OTHER LEGAL REQUESTS FROM SECURITY PERSON-
NEL WHO ARE NOT VERSED IN LEGAL ASSISTANCE OF ANY FORM, YET ALLOWED TO
ISSUE MY REQUEST(S) PIERCE-PENAL.

DECLAMANT WAS RECENTLY MADE AWARE THAT HE HAD TO REQUEST FOR THIS FROM THE
CLERK OF THIS COURT SO THAT A WRIT OF HABEAS CORPUS CAN BE FILED.

DECLAMANT NEEDS ADDITIONAL TIME TO FILE THIS WRIT OF HABEAS CORPUS.

I, DONALD FOSTER, DECLAIMANT, HEREBY DECLARE UNDER THE PENALTY OF PERJURY THAT
THE FOREGOING IS TRUE AND CORRECT. 28 USC 1746, EXECUTED ON: March 12th, 2023.

Donald Foster

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT THE ORIGINAL AND COPY OF THIS PETITION FOR EXTENSION OF
TIME WAS FORWARDED THROUGH U.S. MAIL, POSTAGE PREPAID BY DEPOSITING THE SAME
UNDER #16 WALLWRIGHT UNIT MAIL SYSTEM BEFORE 5:00 PM OF THE PRECEDENT
LOCAL TIME TO: OFFICE OF THE CLERK, FIFTH CIRCUIT, U.S. COURT OF APPEALS

600-5, MAESTRI PARK, SUITE 115, NEW ORLEANS, LA 70130
DATE: March 12th, 2023.

RESPECTFULLY SUBMITTED,
Donald Foster # 1032609
2800 PRISON HALL, WALLWRIGHT UNIT
Jail # 75251