

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

December 11, 2023

Christopher M. Wolpert
Clerk of Court

DARRIN LYNN PICKENS,

Petitioner - Appellant,

v.

DAVID BUSS, Acting Warden,

Respondent - Appellee.

No. 23-5121
(D.C. No. 4:06-CV-00343-TCK-SH)
(N.D. Okla.)

ORDER

Before MATHESON, McHUGH, and ROSSMAN, Circuit Judges.

Pro se petitioner Darrin Lynn Pickens appealed the district court's November 10, 2009 order and judgment denying his habeas petition filed pursuant to 28 U.S.C. § 2254. After the appeal was opened, this court challenged the appellant to demonstrate appellate jurisdiction. 10th Cir. R. 27.3(B). Mr. Pickens filed a memorandum brief in response. Upon review of the memorandum brief, the district court record, and the applicable authorities, we dismiss this appeal for lack of jurisdiction.

Mr. Pickens already appealed the district court's 2009 judgment. *Pickens v. Workman*, No. 09-5170, 373 F. App'x 847 (10th Cir. Apr. 15, 2010) (unpublished). Filing a second or subsequent appeal from the same final decision is not permitted by any federal statute or federal procedural rule. While the district court has entered other orders on the docket since the original judgment, the notice of appeal does not identify any of

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those orders as the subject of the appeal. *See* Fed. R. App. P. 3(c) (describing required content of notice of appeal). Consequently, the scope of this appeal is limited to the matter Mr. Pickens identified in the notice of appeal – the original 2009 judgment. *See Cunico v. Pueblo Sch. Dist. No. 60*, 917 F.2d 431, 444 (10th Cir. 1990). Because Mr. Pickens cannot appeal the original judgment more than once, this appeal must be dismissed. Nothing in his memorandum brief convinces us otherwise.

Even if he could file a second appeal from the 2009 judgment, the appeal would be untimely. Judgment was entered November 10, 2009 (ECF No. 18). The notice of appeal was due by December 10, 2009. 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A). The notice of appeal giving rise to this case was filed November 13, 2023 (ECF No. 49). Because this appeal was filed nearly 14 years after the deadline expired, it is substantially untimely. To the extent Mr. Pickens asks this court to find extraordinary circumstances to allow his appeal to continue, we lack authority to grant such relief. *Bowles v. Russell*, 551 U.S. 205, 213-15 (2007).

In light of the above, we have determined this court lacks jurisdiction to consider Mr. Pickens' appeal. Therefore, the appeal is dismissed.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk