

March 14, 2011

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

JAUMON MONDELL OKYERE, SR.,

Petitioner - Appellant,

v.

JAMES RUDEK, Warden,

Respondent - Appellee.

No. 11-5034

(D.C. No. 4:09-CV-00335-TCK-TLW)

ORDER

Before **KELLY, TACHA,** and **O'BRIEN,** Circuit Judges.

Petitioner Jaumon Okyere, a state prisoner proceeding *pro se*, appeals the district court’s January 26, 2011 Order entered in his 28 U.S.C. § 2254 proceeding. We dismiss for lack of jurisdiction. The order is interlocutory.

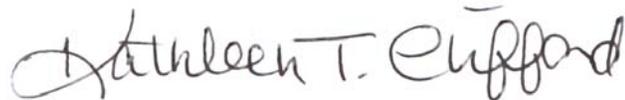
“Federal appellate jurisdiction generally depends on the existence of a decision by the District Court that ‘ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’ ” *Federal Deposit Insurance Corp. v. McGlamery*, 74 F.3d 218, 221 (10th Cir. 1996) (quoting *Coopers & Lybrand v. Liversay*, 437 U.S. 463, 467 (1978)). In *Will v. Hallock*, 546 U.S. 345 (2006), the Supreme Court stressed that very few types of interlocutory orders can qualify as immediately appealable collateral orders. The “conditions

are ‘stringent,’ and unless they are kept so, the underlying doctrine will overpower the substantial finality interests [28 U.S.C.] § 1291 is meant to further.” *Id.* at 349.

Upon review, the court finds that the January 26, 2011 Order appealed by Petitioner does not constitute a final or immediately appealable decision under 28 U.S.C. § 1291 or under any recognized exception to the final judgment rule. In this January 26 order, the district court directed Petitioner to file a response discussing whether he can show “cause and prejudice” or a “fundamental miscarriage of justice” to overcome the procedural bar applicable to his habeas claims. Petitioner filed a response as directed. However, to date, the district court has not entered an order ruling on Petitioner’s first amended § 2254 petition. The January 26 order may be appealed following entry of final judgment on Plaintiff’s § 2254 petition.

The appeal is **DISMISSED** for lack of appellate jurisdiction.

Entered for the Court,
Elisabeth A. Shumaker, Clerk

A handwritten signature in black ink that reads "Kathleen T. Clifford". The signature is written in a cursive, flowing style.

Kathleen T. Clifford
Attorney - Deputy Clerk