

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**May 23, 2016**

**FOR THE TENTH CIRCUIT**

**Elisabeth A. Shumaker**  
**Clerk of Court**

HAROLD D. HORNSBY,  
  
Petitioner - Appellant,

v.

EDWARD L. EVANS, JR.,  
  
Respondent - Appellee.

No. 16-5037  
(D.C. No. 4:95-CV-00940-JHP)  
(N.D. Okla.)

**ORDER**

Before **GORSUCH, MATHESON, and BACHARACH**, Circuit Judges.

This matter is before us to follow up on the show cause order issued April 21, 2016 and on Appellant Harold D. Hornsby’s response thereto. Mr. Hornsby has also filed a motion to consolidate this appeal with appeal No. 16-5028 and a motion for leave to file addendums in both appeals.

As Mr. Hornsby is aware, he is subject to filing restrictions in this court. See *Hornsby v. Sirmons*, No. 07-5057 (10th Cir. June 28, 2007). Specifically, we have directed that “any further applications, motions or other filing collaterally attacking Mr. Hornsby’s convictions in state court Nos. CRF-90-3198 and/or CRF-92-170 will be deemed denied on the thirtieth calendar day after filing unless this court orders otherwise.” *Id.* Because the filing restrictions have not curbed Mr. Hornsby’s abusive filings related to his habeas petition, this court has thrice imposed monetary sanctions on

Mr. Hornsby, most recently on April 8, 2016 in appeal No. 16-5028. In No. 16-5028, we concluded his appeal from the district court's order denying a motion to vacate judgment in his federal habeas case was another attempt to collaterally attack the convictions referenced by this court in No. 07-5057. We sanctioned Mr. Hornsby \$500.00 for his failure to heed the admonitions of this court and the district court and directed that "Any future filings in this court, regardless of their nature, are prohibited unless the \$500 sanction is paid and proof of payment is provided." No. 16-5028, Order at 3.

On April 20, 2016, prior to the deadline for paying the \$500 sanction, Mr. Hornsby filed this appeal from the district court's denial of his motion to reconsider the order that was the subject of appeal No. 16-5028. After full consideration of Mr. Hornsby's response to the court's show cause order, we conclude that the filing restrictions in No. 07-5057 apply to this appeal and that additional monetary sanctions are warranted.

Accordingly, we lift the abatement of this matter, construe this proceeding as an application to file a second or successive habeas application and, pursuant to the directives in No. 07-5057, we deem it DENIED. This denial is not subject to review through rehearing, appeal, or writ of certiorari. See 28 U.S.C. § 2244(b)(3)(E). Moreover, we strike Mr. Hornsby's motions to consolidate and for leave to file addendums in this appeal and No. 16-5028. Both filings were prohibited without proof of payment of the \$500 sanction.

In addition, in light of Mr. Hornsby's continued failure to heed the admonitions of this court and the district court, we impose an additional monetary sanction of \$1000.00.

We emphasize that this sanction is warranted because Mr. Hornsby has not ceased his abusive and repetitive filings. The sanction is payable to the clerk of this court and must be paid within 30 days from the date of this order. Any future filings in this court, regardless of their nature, are prohibited until both the \$500 sanction from No. 16-5028 and the \$1000 sanction imposed herein are paid in full and proof of payment is provided. See *Christensen v. Ward*, 916 F.2d 1485 (1990). The clerk shall dismiss any appeal or original proceeding filed by Mr. Hornsby for failure to prosecute if proof of payment of both sanctions is not provided within 10 days of case opening.

Finally, we remind Mr. Hornsby that the restrictions announced in No. 07-5057 continue, and will be applied to all future submissions that come within the parameters of those restrictions.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker".

ELISABETH A. SHUMAKER, Clerk