

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

April 6, 2018

Elisabeth A. Shumaker
Clerk of Court

JAMES WILSON,

Petitioner - Appellant,

v.

DAVID JABLONSKI, Warden,

Respondent - Appellee.

No. 18-2051
(D.C. No. 1:17-CV-00936-JB-SCY)
(D. N.M.)

ORDER

Before **HOLMES**, **MATHESON**, and **EID**, Circuit Judges.

Appellant James Wilson seeks interlocutory review of the district court’s January 16, 2018 order prohibiting him from filing any pro se submission in his pending 28 U.S.C. § 2254 proceeding “except for a reply to the Government’s answer, objections to Magistrate Judge Yarbrough’s Proposed Findings and Recommended Disposition, a notice of appeal, and a motion for leave to proceed on appeal *in forma pauperis*, without first obtaining permission from the [district court].” The district court has referred the case to Judge Yarbrough, but Judge Yarbrough has not yet submitted proposed findings or a recommended disposition to the district court. Accordingly, Mr. Wilson’s petition remains pending in district court. Upon consideration of the district court’s docket and the applicable law, the court dismisses Mr. Wilson’s appeal for lack of jurisdiction for the reasons stated below.

This court's jurisdiction is generally limited to appeals from final decisions. 28 U.S.C. § 1291; *see also Utah v. Norton*, 396 F.3d 1281, 1286 (10th Cir. 2005) (describing final decisions as those that end the litigation on the merits and leave nothing for the court to do but execute the judgment). Because the district court has not resolved Mr. Wilson's petition, the district court has not yet ended his case on its merits and there is no final order for Mr. Wilson to appeal.

Nor is the district court's order appealable as an injunction under 28 U.S.C. § 1292(a) in that it "relates only to the conduct or progress of litigation before that court." *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 279 (1988) ("An order by a federal court that relates only to the conduct or progress of litigation before that court ordinarily is not considered an injunction and therefore is not appealable under § 1292(a)(1)."); *see Kinnell v. Kansas*, 308 F. App'x 249, 249-50 (10th Cir. 2009) (unpublished) (district court order striking pleadings for failure to comply with filing restrictions "is neither a final order nor a qualifying interlocutory order" for purposes of appellate jurisdiction).

Moreover, even if the district court's order were immediately appealable, Mr. Wilson did not timely file a notice of appeal within thirty days after entry of that order. *See Fed. R. App. P. 4(a)(1)(A)* (requiring appellant to file notice of appeal in civil case in which the United States is not a party within thirty days after entry of the order he seeks to appeal). As a result, "[t]he time limit has run and we are without jurisdiction under the facts of this case." *Jenkins v. Burtzloff*, 69 F.2d 460, 464 (10th Cir. 1995).

For each of these reasons, this court lacks jurisdiction over this appeal.

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read "L A Lee". The signature is written in a cursive, flowing style.

by: Lisa A. Lee
Counsel to the Clerk