

May 1, 2008

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUITElisabeth A. Shumaker
Clerk of Court

STATE OF UTAH,

Plaintiff - Appellee,

v.

JERRY C. COOPER,

Defendant - Appellant.

No. 08-4080
(D.C. No. 2:08-CV-00063-DB)

ORDER

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

This court lacks jurisdiction over this appeal.

The appellant attempted to remove a state criminal action to federal district court. The court, after reviewing the notice of removal, summarily remanded to the state court. *See* 28 U.S.C. § 1446(c)(4) (“If it appears from the face of the [notice of removal] and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.”). The court concluded that removal was inappropriate and that the appellant did not make sufficient allegations to meet the requirements of 28 U.S.C. § 1443.

Remands which are predicated upon lack of subject matter jurisdiction or defects in the removal procedure are not appealable. *See* 28 U.S.C. § 1447(d);

Quackenbush v. Allstate Insurance Co., 517 U.S. 706, 712 (1996). *See also* *Powerex Corp. v. Reliant Energy Services, Inc.*, 127 S.Ct. 2411, 2418 (2007) (“We hold that when, as here, the District Court relied upon a ground that is colorably characterized as subject-matter jurisdiction, appellate review is barred by § 1447(d).”).

Moreover, the one exception found in § 1447(d), i.e., civil actions or criminal prosecutions “[a]gainst any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof....” 28 U.S.C. § 1443(1), is not applicable here.

The requirements for § 1443(1) removals are narrow and well-defined. First, the rights protected must arise under federal laws which specifically protect civil rights and are cast in terms of racial equality. *See Johnson v. Mississippi*, 421 U.S. 213, 219 (1975); *Colorado v. Lopez*, 919 F.2d 131, 132 (10th Cir.1990). “Second, it must appear ‘that the removal petitioner is “denied or cannot enforce” the specified federal rights “in the courts of [the] State.”’” *Lopez*, 919 F.2d at

132 (quoting *Johnson*, 421 U.S. at 219). The appellant's allegations do not meet these requirements.

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Ellen Rich Reiter".

Ellen Rich Reiter
Deputy Clerk/Jurisdictional Attorney