

December 4, 2008

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

APRIL DAWN CARVER,

Defendant - Appellant.

No. 08-7107
(D.C. Nos. 6:08-CV-322-RAW &
6:07-CR-31-RAW-1)
(E. D. Oklahoma)

ORDER

Before **BRISCOE**, **MCCONNELL**, and **HOLMES**, Circuit Judges.

On November 6, 2008, the district court entered an order denying Appellant-Defendant April Carver's motion to recuse the district judge. Defendant Carver, proceeding *pro se*, appeals.

A review of the docket reveals that final judgment has not been entered by the district court in Defendant's proceedings under 28 U.S.C. § 2255.

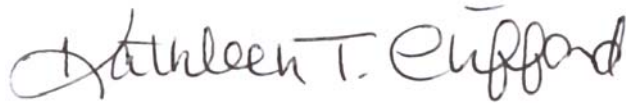
This court lacks jurisdiction. "Federal appellate jurisdiction generally depends on the existence of a decision by the District Court that 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Federal Deposit Insurance Corp. v. McGlamery*, 74 F.3d 218, 221 (10th Cir. 1996) (quoting *Coopers & Lybrand v.*

Liversay, 437 U.S. 463, 467 (1978)).

The district court order appealed by Defendant Carver is not a final or immediately appealable decision under 28 U.S.C. § 1291 or under any recognized exception to the final judgment rule. *See Nichols v. Alley*, 71 F.3d. 347, 350 (10th Cir. 1995) (*per curiam*) (district court order denying motion to recuse is interlocutory and not immediately appealable); *United States v. Cooley*, 1 F.3d 985, 996 n.9 (10th Cir. 1993) (same).

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

Entered for the Court,
Elisabeth A. Shumaker, Clerk

A handwritten signature in dark ink, reading "Kathleen T. Clifford". The signature is written in a cursive, flowing style with a large initial 'K'.

Kathleen T. Clifford
Attorney - Deputy Clerk