

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 22, 2020

**Christopher M. Wolpert
Clerk of Court**

PATRICK C. LYNN,

Plaintiff - Appellant,

v.

JEREMY WILKERSON-RODRIGUEZ,
Master Sergeant, Hutchinson Correctional
Facility, in his individual and official
capacity; JESSICA ZAGER,
CO1/Segregation Officer, Hutchinson
Correctional Facility, in her individual and
official capacity; THOMAS JACKSON,
CO1/Segregation Officer, Hutchinson
Correctional Facility, in his individual and
official capacity; RICHARD GOLDEN,
CO1/Segregation Officer, Hutchinson
Correctional Facility, in his individual and
official capacity; RUSSELL COOK,
CO1/Segregation Officer, Hutchinson
Correctional Facility, in his individual and
official capacity; DOUGLAS
SHERWOOD, CO1/Segregation Officer,
Hutchinson Correctional Facility, in his
individual and official capacity; CLAY
VAN HOOSE, Major/Chief of Security,
Hutchinson Correctional Facility, in his
individual and official capacity; CURTIS
PRICE, Captain, Hutchinson Correctional
Facility, in his individual and official
capacity; JERRY KIPP, Captain,
Hutchinson Correctional Facility, in his
individual and official capacity;
RAYMOND STIGGINS, Lieutenant,
Hutchinson Correctional Facility, in his
individual and official capacity; TOMMY
WILLIAMS, Deputy Warden, Hutchinson
Correctional Facility, in his individual and

No. 20-3178

(D.C. No. 5:19-CV-03003-EFM)
(D. Kan.)

official capacity; DAN SCHNURR, Warden, Hutchinson Correctional Facility, in his individual and official capacity; MIKE NICKLES, Unit Manager, Hutchinson Correctional Facility, in his individual and official capacity; MARCUS DAWES, Unit Counselor, Hutchinson Correctional Facility, in his individual and official capacity; JOHN MARKUS, EAI Supervisor, Hutchinson Correctional Facility, in his individual and official capacity; DEVIN CARPENTER, EAI Special Agent, Hutchinson Correctional Facility, in his individual and official capacity; JASON KRAMER, EAI Special Agent, Hutchinson Correctional Facility, in his individual and official capacity; (FNU) DIAZ, CO1, Hutchinson Correctional Facility, in their individual and official capacity; JEFFREY PETTIJOHN, Unit Counselor, Hutchinson Correctional Facility, in his individual and official capacity; STEVE FOSTER, Captain, Hutchinson Correctional Facility, in his individual and official capacity; CHRISTINA WISE, Grievance and Property/Injury Claims Officer, Hutchinson Correctional Facility, in her individual and official capacity; ROGER WERHOLTZ, Secretary of Corrections, Kansas Department of Corrections, in his individual and official capacity; DOUG BURRIS, CM1, Kansas Department of Corrections, in his individual and official capacity; JOHNNIE GODDARD, Deputy Secretary of Corrections, in his individual and official capacity; MARCI CHAMIDILING, EIA Director, Lansing Correctional Facility, in her individual and official capacity; DEBRA LUNDRY, Health Services Administrator, Corizon Health, Inc. @ Hutchinson Correctional Facility, in her individual and official

capacity; MARTHA MILLER, RN, Corizon Health, Inc. @ Hutchinson Correctional Facility, in her individual and official capacity; GENE MILLER, RN, Corizon Health, Inc. @ Hutchinson Correctional Facility, in his individual and official capacity; KEVIN STANSBURY, Mental Health Counselor, Corizon Health, Inc. @ Hutchinson Correctional Facility, in his individual and official capacity; CARMEN BAYNHAM, HCP, Corizon Health, Inc. @ Hutchinson Correctional Facility, in her individual and official capacity; (FNU) HUSEL, RN, Corizon Health, Inc. @ Hutchinson Correctional Facility, in their individual and official capacity; MISTY KEOLAVONE, Mental Health Supervisor, Corizon Health, Inc. @ Hutchinson Correctional Facility, in her individual and official capacity; WENDY WASINGER, Med Tech, Corizon Health, Inc. @ Hutchinson Correctional Facility, in her individual and official capacity; BARRY LEWIS-HARRIS, Chief Medical Director, Corizon Health, Inc., in his individual and official capacity; HOLLY POOLE, Mental Health Counselor, Corizon Health, Inc. @ Hutchinson Correctional Facility, in her individual and official capacity; TERRY WEBSTER, RN, Corizon Health, Inc. @ Hutchinson Correctional Facility, in his individual and official capacity; CORIZON, INC.; LAURA KELLY, Governor, in her individual and official capacity; RUSSELL JENNINGS, Representative, in his individual and official capacity; LEO DELPERGANG, Representative, in his individual and official capacity; KANSAS DEPARTMENT OF CORRECTIONS; DEREK SCHMIDT, Kansas Attorney General, in his individual and official capacity; STEPHEN MCALLISTER,

Kansas U.S. Attorney, in his individual and official capacity; JOHN DOE, Kansas FBI/SAIC, in his individual and official capacity; (FNU) SCHROEDER, Reno County District Attorney, in their individual and official capacity; (FNU) HENDERSON, Reno County Sheriff, in his individual and official capacity; (FNU) MCCARVILLE, Reno County Judge, in his individual and official capacity; MACKIE DICK, Reno County Judge, in his individual and official capacity; KARLA SCHROEDER, Mental Health Counselor, Corizon Health, Inc. @ Hutchinson Correctional Facility, in her individual and official capacity,

Defendants - Appellees.

ORDER

Before **LUCERO, HOLMES**, and **PHILLIPS**, Circuit Judges.

Pro se plaintiff Patrick Lynn appeals the district court's Memorandum and Order dated June 16, 2020, which addressed several procedural matters and denied the plaintiff's successive request for the presiding district judge to recuse. After the appeal was opened, this court entered an order to show cause as to why the appeal should not be dismissed for lack of jurisdiction. 10th Cir. R. 27.3(B). The appellant filed a memorandum brief in support of appellate jurisdiction. Upon consideration, we dismiss this appeal for lack of jurisdiction.

This court generally has jurisdiction to review only final decisions of district courts. 28 U.S.C. § 1291. A final decision is one that disposes of all issues on the merits

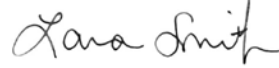
and leaves nothing for the court to do but execute the judgment. *Riley v. Kennedy*, 553 U.S. 406, 419 (2008); *see also D&H Marketers, Inc. v. Freedom Oil & Gas, Inc.*, 744 F.2d 1443, 1444 (10th Cir. 1984). The underlying case has not concluded. No final judgment as been entered. Fed. R. Civ. P. 58. In his memorandum brief, the appellant asks this court to make an exception and hear his interlocutory appeal now. The appellant's citations to statutory exceptions to the final judgment rule and the collateral order doctrine do not persuade us that appellate jurisdiction exists, however. This court held long ago that orders denying motions to recuse judicial officers are not immediately appealable. *Lopez v. Behles (In re American Ready Mix, Inc.)*, 14 F.3d 1497, 1499 (10th Cir. 1994). Our precedent therefore requires dismissal of this appeal.

Even if we found an exception to the court's precedent prohibiting appellate review of orders denying motions to recuse, the appellant filed his appeal after the 30-day deadline expired. Fed. R. App. P. 4(a)(1)(A). The appellant did not offer any argument to excuse the untimeliness of the appeal, nor do we know of any authority to support such an argument. The untimeliness of the appeal is a second ground for dismissal for lack of jurisdiction. *Bowles v. Russell*, 551 U.S. 205, 213-15 (2007).

Lastly, we find that the Prison Litigation Reform Act applies to this appeal and that the appellant must pay the appellate filing fees in full. 28 U.S.C. § 1915(g). The appellant made no attempt to invoke the sole exception in the statute, and we cannot find any meritorious ground on which to apply the exception. Thus, the appellant is responsible for the entire amount of the appellate filing fee for this appeal.

APPEAL DISMISSED.

Entered for the Court
CHRISTOPHER M. WOLPERT, Clerk

A handwritten signature in cursive script that reads "Lara Smith".

by: Lara Smith
Counsel to the Clerk