

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

February 13, 2024

Christopher M. Wolpert
Clerk of Court

In re: ROBERT E. COTNER,

Petitioner - Appellant.

No. 24-5022
(D.C. No. 4:11-MC-00019-JFH)
(N.D. Okla.)

ORDER

Before **MORITZ, EID**, and **CARSON**, Circuit Judges.

On December 13, 2023, pro se petitioner-appellant Robert Cotner submitted a habeas petition to the United States District Court for the Northern District of Oklahoma, which that court concluded did not meet the filing restrictions it imposed upon him in *Cotner v. Workman*, No. 02-CV-702-H (M) (N.D. Okla. Nov. 18, 2003) and thus did not accept for filing. [ECF No. 106].

On February 6, 2024, this court dismissed Mr. Cotner’s appeal of that order because he failed to comply with the filing restrictions this court imposed on him in *Cotner v. Boone*, No. 01-7096, 2002 WL 31045393 (10th Cir. 2002). *See In re Cotner*, No. 24-5004 (10th Cir. Feb. 6, 2024).

While Appeal No. 24-5004 was pending, the district court certified that Cotner could not appeal in good faith and denied his motion for leave to proceed *in forma pauperis* (an “IFP Motion”) in that appeal. [See ECF No. 114]. Mr. Cotner seeks here to appeal the denial of his IFP Motion for Appeal No. 24-5004.

The district court's denial of Mr. Cotner's IFP Motion for Appeal No. 24-5004 is not appealable. Instead, the appellate rules "establish[] a subsequent motion in the court of appeals, rather than an appeal from the order of denial or from the certification of lack of good faith, as the proper procedure for calling in question the correctness of the action of the district court." Fed. R. App. P. 24(a)(5); Fed. R. App. P. 24(a) advisory committee's note to 1967 amendment ¶ 3; *United States v. Sterling*, 225 F. App'x 748, 751-52 (10th Cir. 2007) (unpublished).

And, because this court has dismissed Appeal No. 24-5004, any question of whether Mr. Cotner may proceed IFP in that appeal is likewise moot.

APPEAL DISMISSED.

Entered for the Court

A handwritten signature in black ink, appearing to read 'Christopher M. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk