

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

May 28, 2024

Christopher M. Wolpert
Clerk of Court

In re: CARL A. ELKINS,

Petitioner.

No. 24-7041
(D.C. No. 6:22-CV-00071-JFH-JAR)
(E.D. Okla.)

ORDER

Before **PHILLIPS**, **BRISCOE**, and **MORITZ**, Circuit Judges.

Carl A. Elkins, an Oklahoma prisoner proceeding pro se, petitions this court for a writ of procedendo. We deny the petition for the reasons explained below.

In March 2000, an Oklahoma jury convicted Elkins of second-degree murder. He received a sentence of life imprisonment, with the possibility of parole.

In January 2022, Elkins filed a 28 U.S.C. § 2254 petition in Oklahoma federal court. Presumably inspired by *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), he alleged he is a Native American and that the alleged crime occurred within Indian Country, meaning the state court never had jurisdiction to try and convict him. He further alleged that his trial counsel had been ineffective for failing to raise this issue. Finally, he claimed he had been denied his federal constitutional and statutory rights to a speedy trial.

In May 2023, the district court dismissed Elkins' petition without prejudice for failure to exhaust. Elkins did not appeal.

On May 7, 2024, this court received from Elkins the petition now at issue, in which he requests a writ of procedendo. *Procedendo*, as developed in the English common law system, was a writ from the court of chancery to a subordinate court when the subordinate court “delay[ed] the parties” by failing to “give judgment, either on the one side or the other, when they ought so to do.” 3 William Blackstone, *Commentaries* *109. “In this case a writ of *procedendo* [would] be awarded, commanding [the subordinate court] . . . to proceed to judgment; but without specifying any particular judgment” *Id.* This court has used mandamus (not procedendo) to grant a similar kind of relief when the district court has, for example, allowed a ripe habeas petition to linger undecided for an unusually long time. *See Johnson v. Rogers*, 917 F.2d 1283, 1284–85 (10th Cir. 1990).

In this case, however, the district court has not left Elkins’ § 2254 petition undecided, nor any motion. Elkins instead argues the district court is unduly delaying its use of Federal Rule of Civil Procedure 60(b) to vacate its timeliness ruling, and unduly delaying issuance of a writ of prohibition to the state court—although the district court never made a timeliness ruling, Elkins never moved for Rule 60(b) relief, and he likewise never moved for a writ of prohibition.

The disconnect between Elkins’ arguments and the actual district court proceedings arises from the fact that Elkins’ petition is a photocopy of a template procedendo petition that has been circulating at the James Crabtree Correctional Center in Helena, Oklahoma. The court has recently received numerous requests for procedendo from Crabtree inmates, all using the same template. In any event,

because there is no connection between the district court's decisions and the relief Elkins requests, we deny his petition.

We also find that Elkins has presented no reasoned, nonfrivolous argument in support of relief in these circumstances, so we deny his motion to proceed without prepayment of costs or fees. *See DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991).

Entered for the Court

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

CHRISTOPHER M. WOLPERT, Clerk