

No. 17-2267

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Nov 24, 2020  
DEBORAH S. HUNT, Clerk

ERVINE LEE DAVENPORT, )  
 )  
 Petitioner-Appellant, )  
 )  
 v. )  
 )  
 DUNCAN MACLAREN, Warden, )  
 )  
 Respondent-Appellee. )

ORDER

Before: STRANCH, Circuit Judge.

On November 5, 2020, the court denied Respondent Duncan MacLaren’s (“the State”) motion to stay the mandate. *See* 6 Cir. I.O.P. 41(b) (“The clerk will refer a motion for stay or recall of the mandate, as a single-judge matter, to the judge who wrote the opinion.”). The mandate issued the same day, requiring the State to release or retry Petitioner Ervine Lee Davenport within 180 days of the panel opinion. *See Davenport v. MacLaren*, 964 F.3d 448, 468 (6th Cir. 2020). On November 13, 2020, the State filed a motion to reconsider, recall the mandate, and/or allow it additional time to file a petition for a writ of certiorari or comply with the mandate, citing in particular the Michigan courts’ COVID-19-related prohibition of jury trials. *See* Continuing Order Regarding Court Operations, No. 2020-19 (June 26, 2020) [<https://perma.cc/A443-6Y6K>]. Davenport filed a response within 10 days, making the motion ripe for decision. *See* Fed. R. App. P. 27(a)(3)(A). The response states that Davenport “has no objection to the Court clarifying that the 180 days runs from” November 5, 2020, the date the mandate was issued, though he does oppose recalling the mandate or reconsidering the denial of the State’s prior motion.

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The mandate is what makes the opinion final, relinquishing jurisdiction and authorizing the district court to enforce this court's judgment. *See* Fed. R. App. P. 41(a); 6th Cir. I.O.P. 41(a)(1). The panel opinion granted "Davenport a conditional writ of habeas corpus that will result in his release from prison unless the State of Michigan commences a new trial against him within 180 days from the date of this opinion." *Davenport*, 964 F.3d at 468. We clarify that language here: the 180-day period runs from the date the opinion became final, meaning the date the mandate was ultimately issued: **November 5, 2020**. This interpretation comports with our use of identical language in other cases. *See Patterson v. Haskins*, 470 F.3d 645, 649–50 (6th Cir. 2006).

Thus, the State's motion is **DENIED**.

ENTERED BY ORDER OF THE COURT



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Deborah S. Hunt, Clerk