

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at LEXINGTON

CIVIL ACTION NO. 5:08-200

DARRYL KEITH BAKER,

PETITIONER,

v.

OPINION AND ORDER

TOM SIMPSON, Warden,

RESPONDENT.

* * * * *

This matter is before the Court on the Motion to Dismiss Charges (DE 43) and Motion to Appeal Charge(s) (DE 44) filed by the Petitioner.

On January 13, 2009, this Court entered a Judgment dismissing the Petitioner's Petition for Writ of Habeas Corpus filed under 28 U.S.C. § 2254. On January 22, 2009, the Petitioner filed a Notice of Appeal and also a Motion to Vacate the Court's Judgment.

By letter to the Petitioner dated February 3, 2009, the case manager with the Sixth Circuit Court of Appeals confirmed that the Petitioner's case had been docketed with the Sixth Circuit but stated that the case would be held in abeyance until this court ruled on the pending motions "identified under Fed. R. App. 4(a)(4)." The letter further instructed that "[o]nce this court has jurisdiction, the appeal will proceed in the normal course and you will receive additional instructions from the Clerk's office."

By Opinion and Order dated April 6, 2009, this Court denied the Petitioner's Motion to Vacate and several other post-judgment motions he had filed. This Court also ruled that a Certificate of Appealability should not issue.

Federal Rule of Appellate Procedure 4(a)(4)(B)(i) provides that "[i]f a party files a notice of appeal after the court announces or enters a judgment--but before it disposes of any motion listed in

Rule 4(a)(4)(A)--the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.”

By letter to Petitioner dated April 15, 2009, the Sixth Circuit case manager stated “[t]he district court has ruled on the pending motions (RE #39 order) and therefore your appeal will now proceed in this court.”

Accordingly, the Notice of Appeal filed by the Petitioner is now effective and this Court no longer has jurisdiction over this matter. For these reasons, the Court hereby ORDERS that the Petitioner’s Motion to Dismiss Charges (DE 43) and Motion to Appeal Charges(s) (DE 44) are DENIED. Further, this Court having already ruled that a Certificate of Appealability shall not issue, no further action is required by this Court with regards to the Petitioner’s Notice of Appeal.

Dated this 5th day of October, 2009.



Signed By:

Karen K. Caldwell *KKC*

United States District Judge