

FILED
United States Court of Appeals
Tenth Circuit

July 11, 2008

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

LAWRENCE M. JACKSON,

Petitioner - Appellant,

v.

CLINT FRIEL, Warden,

Respondent - Appellee.

No. 08-4040
(D.C. No. 2:05-CV-00365-DB)
(D. Utah)

ORDER
DENYING CERTIFICATE OF APPEALABILITY

Before **TACHA, KELLY, and McCONNELL**, Circuit Judges.

Lawrence Jackson, a state inmate appearing pro se, seeks a certificate of appealability (“COA”) to appeal the district court’s denial of his motion for a temporary restraining order against the prison. This motion was filed while his habeas corpus petition under 28 U.S.C. § 2254 is pending before the district court.* The district court denied the motion for a temporary restraining order, and this appeal followed.

* A review of the district court docket sheet reveals that though at issue in September 2005, the habeas petition remains pending. In September 2007, the magistrate judge issued an order to show cause why the matter should not be dismissed for failure to prosecute. Both Mr. Jackson and the State objected on the grounds that the petition was ready for a ruling.

In his motion seeking a COA, Mr. Jackson argues that a temporary restraining order is necessary to require the prison to adequately care for his medical needs. However, conditions-of-confinement claims by a state inmate generally must be brought in a civil rights complaint under 42 U.S.C. § 1983 rather than in a habeas petition. See Rael v. Williams, 223 F.3d 1153, 1154 (10th Cir. 2000). The district court's resolution of this motion is not reasonably debatable among jurists given the procedural vehicle. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003).

We DENY a COA, DENY all pending motions, and DISMISS the appeal.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge