

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MARK J. THERIAULT,)	
)	
Petitioner,)	
)	
v.)	1:16-cv-00576-JAW
)	
STATE OF MAINE,)	
)	
Respondent.)	

**ORDER ON PETITIONER’S OBJECTION
TO ORDER ON MOTION TO CONTINUE**

On November 21, 2016, Mark J. Theriault filed a petition for writ of habeas corpus against the state of Maine pursuant to 28 U.S.C. § 2254. *Pet. Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (ECF No. 1). On May 19, 2017, the Magistrate Judge issued a recommended decision, recommending that the Court deny the petition. *Recommended Decision on 28 U.S.C. § 2254 Pet.* (ECF No. 9). On June 2, 2017, Mr. Theriault objected to the recommended decision. *Obj. to Recommended Decision on 28 U.S.C. § 2254* (ECF No. 10). On August 31, 2017, the Court affirmed the recommended decision over Mr. Theriault’s objection. *Order Affirming the Recommended Decision of the Magistrate Judge* (ECF No. 11). The Court ordered that if Mr. Theriault sought a certificate of appealability, his request be denied. *Id.* at 27.

On September 8, 2017, Mr. Theriault filed what the Clerk’s Office concluded was a notice of appeal. *Notice of Appeal* at 1 (ECF No. 13) (“I am in receipt of the order denying my Petition for Writ of Habeas Corpus. I wish to appeal to the First

Circuit Court of Appeals in Boston”). Then, on September 14, 2017, Mr. Theriault filed another document with the Clerk’s Office entitled “Notice of Appeal,” which the Clerk’s Office docketed as such. *Notice of Appeal* (ECF No. 17).

On September 14, 2017, Mr. Theriault also filed a motion to continue, asking that this Court grant him an additional six months to file his appeal with the First Circuit Court of Appeals. *Mot. to Continue* (ECF No. 19). On September 19, 2017, the Magistrate Judge issued an order mooted Mr. Theriault’s request for six months to file the appeal because he had already filed two appeals and therefore his request for more time to do what he had already done was moot. *Order Mooting Mot. to Continue* (ECF NO. 24). The Magistrate Judge speculated that Mr. Theriault might be asking for an extension of time to prosecute his appeal at the First Circuit Court of Appeals, but the Magistrate Judge noted that such a motion had to be directed to the Court of Appeals, not the District Court. *Id.*

On September 26, 2017, Mr. Theriault filed a letter directed to the Clerk of Court. *Objection to the Magistrate Judge’s Order* (ECF No. 26). In the letter, Mr. Theriault expresses concern and confusion. *Id.* at 1. Among other things, Mr. Theriault states:

Did you, or anyone else in your office file a notice of appeal on my behalf to The First Circuit Court of Appeals? If so, it was done against my wishes and definitely without my request or instruction to do so.

Id. at 1. He asks for information about the rules for filing his appeal to the First Circuit Court of Appeals. *Id.* Finally, he asks for information about the petitions, forms or documents required to file his appeal to the First Circuit Court of Appeals.

Id. The Clerk’s Office docketed this filing as an objection to the Magistrate Judge’s order. *Id.* Meanwhile, on October 11, 2017, the Court of Appeals for the First Circuit issued a judgment for its docket number 17-1922:

Upon consideration of appellant’s unopposed motion, it is hereby ordered that this appeal be voluntarily dismissed pursuant to Fed. R. App. P. 42(b). Defendant’s appeal shall proceed under No. 17-1901.

J. (ECF No. 27).

In light of this background, the Court dismisses without prejudice Mr. Theriault’s September 26, 2017 objection to the Magistrate Judge’s order. Despite Mr. Theriault’s protestation that he never filed a notice of appeal with this Court, he is simply wrong. He filed two notices of appeal and one of those documents he plainly denominated “Notice of Appeal.” Furthermore, the Court of Appeals for the First Circuit states that his appeal is proceeding under Court of Appeals docket number 17-1901. Once he effectively filed the notice of appeal, this Court’s jurisdiction over his case—except for matters not relevant to this order—has been subsumed by the Court of Appeals. If Mr. Theriault seeks relief, such as staying his appeal or extending time for appellate filings, he must seek permission from the Court of Appeals for the First Circuit, not this Court.

The Court DISMISSES without prejudice Mark J. Theriault’s Objection to the Order on Motion to Continue (ECF No. 26).

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 12th day of October, 2017