

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

SHAVELLE OSCAR CHAVEZ-NELSON,

Case No. 17-CV-4098 (PJS/DTS)

Petitioner,

v.

ORDER

GOVERNOR TIM WALZ and
COMMISSIONER OF CORRECTIONS
PAUL SCHNELL,

Respondents.

The Court recently granted in part the motion of petitioner Shavelle Chavez-Nelson under Fed. R. Civ. P. 60(b) to reopen this case for the purpose of addressing one of his claims of ineffective assistance of counsel. Notwithstanding the fact that that claim remains pending, Chavez-Nelson filed a notice of appeal and moves for a certificate of appealability.

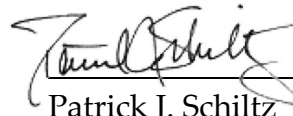
With certain exceptions not relevant here, a court of appeals has jurisdiction only over a district court's "final decisions." 28 U.S.C. § 1291; *SD Voice v. Noem*, 987 F.3d 1186, 1191 (8th Cir. 2021). This means that neither side can appeal until the district court is completely finished with the case and there is nothing left for the district court to do. *SD Voice*, 987 F.3d at 1191. As the Court's order on Chavez-Nelson's Rule 60(b) motion is plainly not a final order, Chavez-Nelson's notice of appeal and motion for a certificate of appealability are premature and the Court retains jurisdiction over this

case. *State ex rel. Nixon v. Coeur D'Alene Tribe*, 164 F.3d 1102, 1106 (8th Cir. 1999) (“To prevent parties from using frivolous appeals to delay or interrupt proceedings in the district court, that court does not normally lose jurisdiction to proceed with the case when one party appeals a non-appealable order.”). Chavez-Nelson’s motion for a certificate of appealability is therefore denied.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT petitioner’s motion for a certificate of appealability [ECF No. 63] is DENIED.

Dated: September 29, 2021



Patrick J. Schiltz
United States District Judge