

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

NAWAZ AHMED,

Petitioner,

-vs.-

MARC C. HOUK, Warden,

Respondent

:

Case No. 2:07-cv-658

:

District Judge Michael H. Watson
Magistrate Judge Michael R. Merz

:

DECISION AND ORDER DENYING MOTION TO STRIKE

This capital habeas corpus case is before the Court on Petitioner's *pro se* Motion to Strike (ECF No. 198) the Notice of Appeal filed in this case by Attorneys Shank and Yeazel (ECF No. 195).

Ahmed asserts counsel were not authorized to file a notice of appeal on his behalf. Counsel appointed to represent capital habeas petitioners are authorized to perform all attorney functions in the trial court and in "subsequent" proceedings, including clemency applications. *Harbison v. Bell*, 556 U.S. 180 (2009). Filing a notice of appeal from a final judgment is a duty of trial counsel to the point that failure to do so can constitute ineffective assistance of trial counsel.

Filing a notice of appeal divests the District Court of jurisdiction over a case and vests jurisdiction in the Circuit Court of Appeals until the district court receives the mandate of the court of appeals. *Marrese v. American Academy of Osteopathic Surgeons*, 470 U.S. 373 (1985); *Pickens v. Howes*, 549 F.3d 377, 381 (6th Cir. 2008); *Pittock v. Otis Elevator Co.*, 8 F.3d 325, 327 (6th Cir.

1993); *Lewis v. Alexander*, 987 F.2d 392, 394 (6th Cir. 1993); *Cochran v. Birkel*, 651 F.2d 1219, 1221 (6th Cir. 1981).

The filing of a notice of appeal does not bind an unwilling litigant to proceed with the appeal. Petitioner is free to request the Sixth Circuit to dismiss the appeal and/or to request a remand for consideration of issues he apparently believes this Court must address before entering final judgment, but this Court now lacks jurisdiction over the case.

The Motion to Strike the Notice of Appeal at ECF No. 195 is DENIED.

July 15, 2021.

s/ Michael R. Merz
United States Magistrate Judge