

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ROGER DEAN GILLISPIE,

Petitioner,

:

Case No. 3:09-cv-471

:

-vs-

Magistrate Judge Michael R. Merz

DEB TIMMERMAN-COOPER, Warden,

:

Respondent.

NOTICE OF APPELLATE DECISION

On November 13, 2014, the United States Court of Appeals for the Sixth Circuit affirmed this Court's denial of Respondent's Motion to Vacate the Judgment under Fed. R. Civ. P. 60(b). *Gillispie v. Warden*, ___ F.3d ___, 2014 U.S. App. LEXIS 21512 (6th Cir. 2014).

In the course of its opinion, the Sixth Circuit observed, “[t]he vacatur of Gillispie’s criminal judgment [by the Ohio Second District Court of Appeals] removed the predicate for federal habeas jurisdiction.” *Id.* at *4. “[T]he district court’s assertion of a prospective interest in the conditional writ’s enforcement is flatly inconsistent with our decision in *Eddleman* [*v. McKee*, 586 F.3d 409 (6th Cir. 2009)]. . . . *Eddleman*’s unequivocal holding, standing alone, is enough to establish that the district court was without further jurisdiction in Gillispie’s case once his criminal judgment was vacated” *Id.* at *9-10.

The plain implication of these observations by the Sixth Circuit is that the time set in the Conditional Writ (Doc. No. 63) to commence a new trial is of no further force or effect. Because the mandate has not yet issued, this Court does not presently have jurisdiction of the case

so as to enter an order in compliance with the Sixth Circuit's opinion. However, in the interest of comity, the Court notifies the Montgomery County Common Pleas Court of the Sixth Circuit's decision which will remain the law of the case in the absence of Supreme Court review.

This Notice has no impact on the preclusive effect of the Decision and Order Granting the Writ which the Sixth Circuit observed is left "to the Ohio courts, in the first instance, to determine . . ." *Id.* at *15.

November 17, 2014.

s/ ***Michael R. Merz***
United States Magistrate Judge

Copy: The Honorable Steven K. Dankof, Sr.