

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

State of Kansas v. Sean Suttington

No. 26-3128-JWL (D. Kan. May 14, 2026) · No. 26-3128-JWL · Decided May 14, 2026

SUMMARY

The United States District Court for the District of Kansas dismissed Sean Suttington’s attempted removal of his Kansas state criminal case. The court held that the notice was untimely, failed to state grounds for removal, and did not include the required state-court documents; because the state case had not been removed, remand was unnecessary.

CASE DETAILS

COURT	United States District Court for the District of Kansas
WRITING FOR THE COURT	John W. Lungstrum
JURISDICTION	United States District Court for the District of Kansas
DECIDED	May 14, 2026
DOCKET	26-3128-JWL
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant attempted to remove his Kansas state criminal case to federal district court after pleading guilty and while his state appeal was pending. The federal court dismissed the removal action.
STANDARD OF REVIEW	Under 28 U.S.C. § 1455(b)(4), the court must promptly examine a notice of removal and summarily remand if it clearly appears from the face of the notice that removal should not be permitted. Because the state case had not been removed, the court dismissed the federal action instead.
PRECEDENTIAL VALUE	Unknown; memorandum and order from a federal district court with no reporter citation.
PARTIES	Sean Suttington v. State of Kansas

TOPICS

- criminal procedure
- pleadings
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a state criminal defendant may remove a criminal case to federal court after conviction and sentencing while the case is pending on appeal.
2. Whether the notice of removal satisfied the statutory requirements for a criminal removal under 28 U.S.C. § 1455.
3. Whether the federal court should remand or dismiss when the state criminal case was never actually removed from state court.

HOLDINGS

1. A state criminal defendant may remove under 28 U.S.C. § 1443(1) only by alleging denial of a federal right arising under a specific law protecting racial equality and inability to enforce that right in the state proceeding; Suttington alleged no permissible ground for removal.
2. The notice of removal was untimely because it was filed after the defendant had pleaded guilty and been sentenced, rather than no later than thirty days after arraignment or before trial, absent an applicable showing of good cause.
3. The notice was deficient because it did not include all grounds for removal and failed to include copies of all process, pleadings, and orders served on the defendant.
4. Dismissal was appropriate because the state criminal case had not been removed to federal court; remand was unnecessary.

KEY QUOTATIONS

“The general rule is that a criminal prosecution can be removed from a state to a federal court only after indictment and before trial.”

“Because Mr. Suttington’s state court criminal case does not reflect that a notice of removal was filed in that case or that the case was removed to this Court, the posture of this case is such that remand is not necessary. Therefore, dismissal is appropriate.”

FACTUAL BACKGROUND

Suttington pleaded guilty to interference with parental custody in a Kansas state criminal case. He filed a pro se appeal and his attorney appealed the sentence; the case was pending on appeal when he sought federal removal. The state docket did not show that a notice of removal had been filed in the state case or that the case had been removed to federal court.

PROCEDURAL HISTORY

Suttington pleaded guilty in the District Court of Wyandotte County, Kansas, to interference with parental custody. He filed a pro se notice of appeal, and his attorney separately appealed the sentence. He then filed a notice of removal in the federal district court, although the state docket did not reflect that a notice of removal

had been filed there. The federal court concluded that the notice was untimely, failed to identify a permissible removal ground, and did not include the required state-court materials; because no removal had actually occurred, the court dismissed rather than remanded the matter.

DISPOSITION

dismissed

CASES CITED

- Massachusetts v. Libertad, Civ. Action No. 22-10131-DJC, 2022 WL 479799, at *2 (D. Mass. Feb. 16, 2022)
- Johnson v. Mississippi, 421 U.S. 213, 219 (1975)
- Miller v. Louisiana, Civ. Action No. 18-14251, 2019 WL 1293273, at *2 (E.D. La. Mar. 1, 2019)
- Smith-El v. Louisiana, Civ. Action No. 16-cv-1310, 2016 WL 8900203, at *1 (W.D. La. Sept. 27, 2016), adopted, 2017 WL 1821111 (W.D. La. May 3, 2017)
- Barber v. Vance, Case No. 3:16-cv-2105, 2019 WL 267874, at *2 (D. Or. Jan. 18, 2019)
- New Hampshire v. Woodham, Case No. 21-cr-128-JL, 2022 WL 1432069, at *2 (D.N.H. Apr. 6, 2022), adopted, 2022 WL 1423608 (D.N.H. May 4, 2022)
- Colombo v. County of Suffolk, 2010 WL 1459196, at *1 (E.D.N.Y. Apr. 8, 2010)

OPINION

Suttington

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

STATE OF KANSAS,

Plaintiff,

v. CASE NO. 26-3128-JWL

SEAN SUTTINGTON,

Defendant.

MEMORANDUM AND ORDER

Defendant Sean Suttington filed this matter as a Notice of Removal seeking to remove his state court criminal case from the District Court of Wyandotte County, Kansas, to this Court. Mr. Suttington acknowledges in his Notice of Removal that he is not sure that they will file his Notice of Removal in his state criminal case, and that his criminal case is “in the appeals status.” (Doc. 1, at 1, 2.) A Kansas District Court Records search shows that Mr. Suttington’s criminal case is pending on appeal. See State v. Suttington, Case No. WY-2025-CR-000984 (District Court of Wyandotte County, Kansas). The December 15, 2025 Minute Entry reflects that Mr. Suttington pleaded guilty to Interference with Parental Custody. Mr. Suttington filed a pro se notice of appeal on December 29, 2025. A Kansas Sentencing Guidelines Journal Entry of Judgment was signed on

January 27, 2026, and entered on January 29, 2026. Mr. Suttington's attorney filed a notice of appeal regarding the sentence on January 27, 2026. The docket in the state court criminal case does not reflect a notice of removal. Under 28 U.S.C. § 1443, a state criminal defendant may remove a state criminal case to a federal district court if the defendant "is denied or cannot enforce . . . a right under any law providing for the equal civil rights of citizens of the United States." 28 U.S.C. § 1443(1). "To remove a case under Section 1443(1), the criminal defendant must allege that he has been denied a federal right arising under a specific law or statute protecting racial equality, and that he cannot enforce his federal civil rights in his state court criminal proceedings." *Massachusetts v. Libertad*, Civ. Action No. 22-10131-DJC, 2022 WL 479799, at *2 (D. Mass. Feb. 16, 2022) (citing *Johnson v. Mississippi*, 421 U.S. 213, 219 (1975) (setting forth two-prong test for removal of criminal prosecutions where defendant is denied equal civil rights)). In addition, the removal of state-court civil or criminal actions to federal court is permissible where the action is against a federal officer, see 28 U.S.C. § 1442, or a member of the armed forces, see 28 U.S.C. § 1442a. Mr. Suttington has failed to state any grounds for removal. Section 1455 requires a notice of removal of criminal prosecutions to "include all grounds for such removal" and provides that "[a] failure to state grounds that exist at the time of the filing of the notice shall constitute a waiver of such grounds." 28 U.S.C. § 1455(b)(2). Mr. Suttington provides no authority for removing a criminal case after sentencing and while the case is pending on appeal. The procedure for removal of criminal prosecutions is set forth in 28 U.S.C. § 1455, and provides that: A notice of removal of a criminal prosecution shall be filed not later than 30 days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time. 28 U.S.C. § 1455(b)(1). "Critically, the foregoing statute refers to criminal 'prosecutions,' consistent with the notion that the point of removal is to have the trial go forward in federal, rather than state, court." *Miller v. Louisiana*, Civil Action No. 18-14251, 2019 WL 1293273, at

*2 (E.D. La. March 1, 2019), adopted, 2019 WL 1277522 (E.D. La. March 20, 2019). "That is reflected in the requirement that a notice of removal must generally be filed no later than thirty days after the arraignment in state court." *Id.* "[T]he statute clearly does not contemplate removal of a case after conviction." *Id.* (emphasis in original) (citing *Smith-El v. Louisiana*, Civ. Action No. 16-cv-1310, 2016 WL 8900203, at *1 (W.D. La. Sept. 27, 2016), adopted, 2017 WL 1821111 (W.D. La. May 3, 2017); see also *Barber v. Vance*, Case No. 3:16-cv-2105, 2019 WL 267874, at *2 (D. Ore. Jan. 18, 2019) ("[Plaintiff's] criminal case is finished at the state trial court level and removal to this trial court is improper after the case is closed (and untimely, because he would have needed to file a petition of removal within 30 days of his arraignment, see 28 U.S.C. § 1455(b)(1))"); 8A Fed. Proc. L.Ed. § 22:59 ("The general rule is that a criminal prosecution can be removed from a state to a federal court only after indictment and before trial.")); see also *New Hampshire v. Woodham*, Case No. 21-cr-128-JL, 2022 WL 1432069, at *2 (D. N.H. April 6,

2022), adopted, 2022 WL 1423608 (D. N.H. May 4, 2022) (“A state court criminal defendant may remove a state court ‘criminal prosecution[]’ to federal district court in the district ‘within which such prosecution is pending.’”); *Colombo v. Cty. of Suffolk*, 2010 WL 1459196, at *1 (E.D.N.Y. April 8, 2010) (noting that the court denied plaintiff’s application to remove her closed criminal action, finding no good cause to extend the deadline to remove a criminal action and that the underlying criminal prosecution had concluded, leaving no action to remove). Mr. Suttington’s Notice of Removal is untimely and fails to include “a copy of all process, pleadings, and orders served upon such defendant or defendants in such action” as required by 28 U.S.C. § 1455(a). The statute directs this Court to “examine the notice promptly” and “[i]f it clearly appears on the face of the notice . . . that removal should not be permitted, the court shall make an order for summary remand.” *Id.* at § 1455(b)(4). Because Mr. Suttington’s state court criminal case does not reflect that a notice of removal was filed in that case or that the case was removed to this Court, the posture of this case is such that remand is not necessary. Therefore, dismissal is appropriate. IT IS THEREFORE ORDERED that this case is dismissed. IT IS SO ORDERED. Dated May 14, 2026, in Kansas City, Kansas. S/ John W. Lungstrum

JOHN W. LUNGSTRUM

UNITED STATES DISTRICT JUDGE