

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Tracy v. Lumpkin

No. 21-40686, United States Court of Appeals for the Fifth Circuit (August 5, 2022)

SUMMARY

The Fifth Circuit held it lacked jurisdiction under the collateral-order doctrine to review the denial of a pro se motion to substitute federal habeas counsel in a capital case. The court determined that the order was not effectively unreviewable on appeal from a final judgment, as challenges to counsel substitution can be reviewed post-judgment. The appeal was dismissed for lack of appellate jurisdiction under 28 U.S.C. § 1291.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	James E. Graves, Jr.; Edith Brown Clement; Gregg Costa
JURISDICTION	Federal
DECIDED	August 5, 2022
DOCKET	21-40686
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Eastern District of Texas, USDC No. 5:20-CV-156. The district court denied Tracy's pro se motion to substitute federal habeas counsel. Tracy appealed that interlocutory order.
PRECEDENTIAL VALUE	Published
PARTIES	Billy Tracy v. Bobby Lumpkin, Director, Texas Department of Criminal Justice, Correctional Institutions Division

TOPICS

- appellate jurisdiction
- habeas corpus
- criminal procedure
- appellate procedure

PRACTICE AREAS

- Appellate Procedure
- Habeas Corpus
- Criminal Law - Death Penalty

QUESTIONS PRESENTED

1. Whether the court of appeals has jurisdiction under the collateral-order doctrine to review the denial of a pro se motion to substitute federal habeas counsel.

HOLDINGS

1. The court lacks jurisdiction under the collateral-order doctrine because the order is not effectively unreviewable on appeal from a final judgment.

KEY QUOTATIONS

“The salient issue is whether our court has jurisdiction under the collateral-order doctrine to review the denial of Tracy’s pro se motion to substitute federal habeas counsel.” (at 3)

“The effectively unreviewable prong hinges on “whether delaying review until the entry of final judgment would imperil a substantial public interest or some particular value of a high order.”” (at 4)

“Our court lacks jurisdiction under the collateral-order doctrine to review the denial of Tracy’s pro se motion to substitute his federal habeas counsel.” (at 5)

FACTUAL BACKGROUND

Billy Joel Tracy was convicted of capital murder for killing a correctional officer and sentenced to death. His conviction and sentence were affirmed on direct appeal. He sought state post-conviction relief, which was denied. He then filed a motion in federal district court for appointment of counsel under 18 U.S.C. § 3599 to assist in preparing a federal habeas petition. The district court granted the motion but appointed counsel not requested by Tracy. Tracy later filed a pro se motion to substitute counsel, alleging lack of adequate representation and failure to communicate, and requesting appointment of his initially requested counsel or his state habeas counsel. The district court denied the motion, finding no sufficient basis for substitution and noting that state habeas counsel was potentially conflicted.

PROCEDURAL HISTORY

Tracy was convicted of capital murder and sentenced to death. His conviction and sentence were affirmed on direct appeal. He sought state post-conviction relief unsuccessfully. He then filed a motion for appointment of counsel under 18 U.S.C. § 3599 in federal district court. The court appointed counsel not requested by Tracy. Tracy filed a pro se motion to substitute counsel, which was denied. He appealed that denial. After filing the notice of appeal, he filed a § 2254 petition through his appointed counsel.

DISPOSITION

dismissed

CASES CITED

- Tracy v. State, 597 S.W.3d 502 (Tex. Crim. App. 2020)
- Ex parte Tracy, No. WR-86,669-02, 2020 WL 5808144 (Tex. Crim. App. Sept. 30, 2020)
- Henry v. Lake Charles Am. Press, L.L.C., 566 F.3d 164 (5th Cir. 2009)

- Will v. Hallock, 546 U.S. 345 (2006)
- Mohawk Indus., Inc. v. Carpenter, 558 U.S. 100 (2009)
- Kershaw v. Shalala, 9 F.3d 11 (5th Cir. 1993)
- Digit. Equip. Corp. v. Desktop Direct, Inc., 511 U.S. 863 (1994)
- Vantage Health Plan, Inc. v. Willis-Knighton Med. Ctr., 913 F.3d 443 (5th Cir. 2019)
- United States v. Minor, 714 F.3d 319 (5th Cir. 2013)
- United States v. Fields, 483 F.3d 313 (5th Cir. 2007)
- Crain v. Sec'y, Fla. Dept. of Corr., 918 F.3d 1294 (11th Cir. 2019)
- Thomas v. Scott, 47 F.3d 713 (5th Cir. 1995)
- Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368 (1981)
- Richardson-Merrell, Inc. v. Koller, 472 U.S. 424 (1985)
- Flanagan v. United States, 465 U.S. 259 (1984)

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