

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

James Wallace Fox v. Brick Tripp

714 F. App'x 260 (4th Cir. 2018) · No. 17-7609 · Decided March 8, 2018

SUMMARY

This unpublished Fourth Circuit opinion dismisses an appeal from a district court order regarding a 28 U.S.C. § 2241 petition. The appellate court held that it lacked jurisdiction because the district court had not issued a final order or any appealable interlocutory or collateral order. The court denied leave to proceed in forma pauperis and dismissed the appeal.

CASE DETAILS

COURT	United States Court of Appeals for the Fourth Circuit
WRITING FOR THE COURT	Per Curiam; Niemeyer; Traxler; Duncan
JURISDICTION	Federal
DECIDED	March 8, 2018
DOCKET	17-7609
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:16-hc-02269-BO)
PRECEDENTIAL VALUE	Unpublished
PARTIES	James Wallace Fox v. Brick Tripp

TOPICS

- appellate jurisdiction
- final judgment rule
- interlocutory appeal
- federal habeas corpus
- post-conviction relief

PRACTICE AREAS

- Habeas Corpus
- Appellate Procedure

QUESTIONS PRESENTED

1. Whether the appeal should be dismissed for lack of jurisdiction because the district court has not issued a final order or any appealable interlocutory or collateral order.

HOLDINGS

1. The court lacks jurisdiction because the district court has not issued a final order or any appealable interlocutory or collateral order.

KEY QUOTATIONS

“The district court has not issued any final order or any appealable interlocutory or collateral order.” (714 F. App'x 260)

“Accordingly, we deny leave to proceed in forma pauperis and dismiss the appeal for lack of jurisdiction.” (714 F. App'x 260)

FACTUAL BACKGROUND

James Wallace Fox, a federal prisoner, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. The district court had not yet ruled on the petition. Fox attempted to appeal the district court's motion to dismiss, but no final order had been entered.

PROCEDURAL HISTORY

Fox filed a 28 U.S.C. § 2241 petition in the district court. The district court had not yet issued a final order. Fox sought to appeal the motion to dismiss his petition. The Fourth Circuit dismissed the appeal for lack of jurisdiction because no final order or appealable interlocutory/collateral order had been entered.

DISPOSITION

dismissed

CASES CITED

- Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 545-46 (1949)

OPINION

PER CURIAM.

UNPUBLISHED UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT No. 17-7609 JAMES WALLACE FOX, Petitioner - Appellant, v. BRICK TRIPP, Respondent - Appellee. Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:16-hc-02269-BO) Submitted: February 9, 2018 Decided: March 8, 2018 Before NIEMEYER, TRAXLER, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion. James Wallace Fox, Appellant Pro Se. Roberto Francisco Ramirez, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee. Unpublished opinions are not binding

precedent in this circuit. PER CURIAM: James Wallace Fox seeks to appeal the motion to dismiss his 28 U.S.C. § 2241 (2012) petition.

This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2012), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949).

The district court has not issued any final order or any appealable interlocutory or collateral order. Accordingly, we deny leave to proceed in forma pauperis and dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED 2