

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

Justin Gardner v. State of Nebraska

No. 8:17CV255, United States District Court for the District of Nebraska (January 14, 2026)

SUMMARY

The United States District Court for the District of Nebraska denied Justin Gardner's motions to consolidate several closed habeas cases and to obtain a certificate of appealability. The court also warned Gardner that further frivolous filings in the closed case could result in filing restrictions.

CASE DETAILS

COURT	United States District Court for the District of Nebraska
WRITING FOR THE COURT	Joseph F. Bataillon
JURISDICTION	United States District Court for the District of Nebraska
DECIDED	January 14, 2026
DOCKET	8:17CV255
DISPOSITION	other
PROCEDURAL POSTURE	In a closed federal habeas case, the petitioner moved to consolidate several purportedly related closed cases and sought a certificate of appealability. The district court denied both motions and warned that further frivolous filings could result in filing restrictions.
PRECEDENTIAL VALUE	unpublished district court memorandum and order; nonprecedential
PARTIES	Justin Gardner v. State of Nebraska

TOPICS

[federal habeas corpus](#) [civil procedure](#) [appellate procedure](#) [sanctions](#)

PRACTICE AREAS

[Federal habeas corpus](#) [Civil procedure](#) [Appellate procedure](#)

QUESTIONS PRESENTED

1. Whether the court should consolidate the closed cases identified by Gardner under Federal Rule of Civil Procedure 42.
2. Whether Gardner was entitled to a certificate of appealability in the closed habeas case.

3. Whether the court should warn Gardner that further frivolous filings could result in filing restrictions.

HOLDINGS

1. The motion to consolidate was denied because the referenced matters were closed, had been inactive for more than three years, and consolidation was unnecessary and frivolous.
2. The motion for a certificate of appealability was denied because the case was closed, the underlying petition had been dismissed for failure to file an amended petition, four prior appeals had been dismissed, and any further appeal would be frivolous.
3. The court warned Gardner to refrain from filing further frivolous appeals or motions in the closed case and stated that continued frivolous filings would result in filing restrictions.

KEY QUOTATIONS

“because all the cases are closed, the Court finds Gardner’s request to consolidate the matters unnecessary and frivolous.” (Section I)

“The Court sees absolutely no reason to issue a COA in this closed matter as any further attempt by Gardner to file an appeal in this case would be utterly frivolous.” (Section II)

FACTUAL BACKGROUND

Gardner sought to consolidate several cases that appeared to be closed habeas cases previously filed in the District of Nebraska. The referenced cases had no activity for more than three years, and some case numbers appeared to have been listed incorrectly because Gardner was not a party to those matters. Gardner also sought a certificate of appealability despite the dismissal of this case for failure to file an amended petition and the dismissal of four prior appeals.

PROCEDURAL HISTORY

The case was dismissed on March 1, 2018, after Gardner failed to file an amended petition as ordered. Gardner had already prosecuted four appeals in the case, all of which were dismissed. He later filed the present motions in the closed case; the court denied consolidation as unnecessary and frivolous, denied a certificate of appealability, and reiterated prior warnings concerning frivolous filings.

DISPOSITION

other

CASES CITED

- Gardner v. Nebraska, No. 8:18CV241, 2019 WL 13247450 (D. Neb. June 12, 2019)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA JUSTIN GARDNER, Petitioner, 8:17CV255 vs. MEMORANDUM AND ORDER STATE OF

NEBRASKA, Respondent. This closed habeas case is before the Court on Petitioner Justin Gardner's ("Gardner") "Motion to Consolidat[e] Federal Civil U.S. District Court Cases Together" (the "Motion to Consolidate"), Filing No. 68, and motion requesting "Permission to Grant CERTIFICATE OF APPEALABILITY C.O.A." (the "Motion for COA"), Filing No. 70.

Upon review, the Court will deny both motions. I. MOTION TO CONSOLIDATE In his Motion to Consolidate, Gardner asks to consolidate various civil cases he has filed together pursuant to "Rule 42. Consolidation; separate trials," Filing No. 68, which the Court understands to refer to Federal Rule of Civil Procedure 42, which allows federal courts to consolidate actions where "actions before the court involve a common question of law or fact," Fed.

R. Civ. P. 42(a). Specifically, Gardner asks that "8:17cv255[,] 8:18cv241[,] [and] 8:22cv119" be consolidated, "8:17cv390[,] 8:18cv115[,] [and] 8:22cv121" be consolidated, and "8:17cv389[,] 8:18cv46[,] 4:19cv3005[,] [and] 8:22cv120" be consolidated. Filing No. 68. All the cases Gardner references appear to be closed habeas cases that he previously filed in this Court.¹ There has been no activity ¹ It appears Gardner mistakenly wrote the incorrect case numbers when he referred to cases 8:22cv119, 8:18cv115, 8:22cv121, and 8:22cv120, because Gardner is not a party to any of those cases.

For purposes in these cases for over three years prior to Gardner filing the present motion, and, because all the cases are closed, the Court finds Gardner's request to consolidate the matters unnecessary and frivolous.

Accordingly, Gardner's Motion to Consolidate is denied. II. MOTION FOR COA Gardner next requests that the Court grant him a certificate of appealability ("COA") pursuant to Rule 22 of the Federal Rules of Appellate Procedure, which provides that in habeas corpus proceedings where the detention complained of arises out of state process, like Gardner's, a petitioner "cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)." Fed.

R. App. P. 22(b)(1). This case was originally dismissed on March 1, 2018, because Gardner failed to file an amended petition as ordered by the Court, see Filing No. 21; Filing No. 22,² and Gardner has already prosecuted four appeals in this case, which were all dismissed, see Filing No. 31; Filing No. 43; Filing No. 58; Filing No. 66.

The Court sees absolutely no reason to issue a COA in this closed matter as any further attempt by Gardner to file an appeal in this case would be utterly frivolous. Accordingly, the Court will deny Gardner's Motion for COA.

In addition, Gardner has been warned previously not to file any further frivolous appeals in this case, see Filing No. 51; Filing No. 62, and the Court will reiterate that warning here as well as admonish Gardner to refrain from filing any future documents or of the Motion to Consolidate, the

Court assumes Gardner intended to reference his closed habeas cases at case numbers 8:21cv119, 8:18cv557, 8:21cv121, and 8:21cv120.

2 Gardner later filed another habeas action at case number 8:18cv241 challenging the same state-court conviction that was the subject of this case, which was dismissed with prejudice on June 12, 2019. See *Gardner v. Nebraska*, No. 8:18CV241, 2019 WL 13247450 (D. Neb. June 12, 2019). motions in this closed case as doing so unnecessarily expends the Court's limited resources.

If Gardner fails to heed these warnings and file further frivolous motions in this closed case, the Court will impose limitations on his right to file. IT IS THEREFORE ORDERED that: 1. Gardner's Motion to Consolidate, Filing No. 68, is denied. 2. Gardner's Motion for COA, Filing No. 70, is denied. 3. Gardner is warned to refrain from filing any further frivolous appeals or motions in this closed case.

Failure to do so will result in the Court imposing filing restrictions on Gardner. Dated this 14th day of January, 2026. BY THE COURT: Joseph F. Bataillon Senior United States District Judge