

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

\_\_\_\_\_  
No. 19-40975  
\_\_\_\_\_

United States Court of Appeals  
Fifth Circuit

**FILED**

January 15, 2020

Lyle W. Cayce  
Clerk

TRACY RAY GIBSON,

Petitioner - Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent - Appellee

\_\_\_\_\_  
Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 9:17-CV-188  
\_\_\_\_\_

Before HIGGINBOTHAM, SOUTHWICK, and HO, Circuit Judges.

PER CURIAM\*:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). In this habeas corpus case filed by a state prisoner, the petitioner filed a notice of appeal from the magistrate judge's report and recommendation to deny the petition.

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

## No. 19-40975

“Federal appellate courts have jurisdiction over appeals only from (1) a final decision under 28 U.S.C. § 1291; (2) a decision that is deemed final due to jurisprudential exception or that has been properly certified as final pursuant to Fed. R. Civ. P. 54(b); and (3) interlocutory orders that fall into specific classes, 28 U.S.C. § 1292(a), or that have been properly certified for appeal by the district court, 28 U.S.C. § 1292(b).” *Askanase v. Livingwell, Inc.*, 981 F.2d 807, 809-10 (5th Cir. 1993). The report and recommendation of a magistrate judge is not a final order and it does not fall into any of the other categories that would make it appealable. *See United States v. Cooper*, 135 F.3d 960, 961 (5th Cir. 1998). Moreover, although the district court subsequently adopted the report and recommendation, the present notice of appeal is not effective for purposes of appealing that judgment. *Id.* at 962 (“[T]he recommendation of a magistrate judge is not a final decision and does not in any way dispose of a party’s claims.”). Accordingly, the appeal is DISMISSED for want of jurisdiction.