UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-5244
Summary Calendar

STEPHEN F. HATTEN,

Plaintiff-Appellant,

VERSUS

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
91 0873

September 10, 1993

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Stephen Hatten was convicted by guilty plea of two counts of bank fraud in the Western District of Louisiana in 1988. He first filed a motion for mandamus relief in the federal district court for the District of Columbia, seeking credit for 120 days of time spent in residence at the City of Faith Community Correctional Center in Monroe, Louisiana, as part of his sentence for the bank fraud conviction.

The case was recharacterized as a petition for a writ of habeas corpus and transferred to the Eastern District of North Carolina where Hatten was in custody in federal prison at the time. Hatten

---

[1]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

filed an amended petition for habeas corpus relief, but was released from prison before adjudication, returning to Harrisburg, Louisiana, to serve his five-year term of probation under the supervision of a United States probation officer. The District Court for the Eastern District of North Carolina then transferred the case to the District Court for the Western District of Louisiana, based on its finding that Hatten's claims constituted claims under 28 U.S.C. §§ 2241 and 2255, both of which were properly within the jurisdiction of the court for the Western District of Louisiana.

The case was referred to a magistrate judge, who recommended that Hatten's petitions for habeas corpus relief under §§ 2241 and 2255 be denied. Hatten filed objections to the magistrate judge's report, but the district court conducted an independent review and adopted the magistrate judge's findings and recommendation in an order entered September 27, 1991.

On October 2, 1991, Hatten timely served and filed a Motion for Findings of Fact and Conclusions of Law under Fed. R. Civ. P. 52. On October 3, 1991, he filed a notice of appeal from the denial of his habeas corpus action. This court dismissed his appeal for lack of jurisdiction, noting that the pending Rule 52 motion precluded appellate jurisdiction. Hatten responded by filing a "Notice of Unresolved Motion," followed by a "Notice of Withdrawal" of his Rule 52 motion. He then filed a notice of appeal from the final order denying his habeas corpus petition entered on September 25, 1991.

The threshold issue presented by the instant appeal is whether this court has jurisdiction. This court must examine the basis of its jurisdiction on its own motion if necessary. **Mosley v. Cozby**, 813 F.2d 659, 660 (5th Cir. 1987). Hatten's prior attempt to appeal the denial of his habeas petition was dismissed by this court because his rule 52 motion was still pending. He has attempted to vest this court with jurisdiction by unilaterally withdrawing his rule 52 motion. **Id**. at 188.

Hatten cites no authority in support of his ability to withdraw the motion and confer jurisdiction. Fed. R. App. P. 4(a)(4) explicitly states that a notice of appeal filed before the disposition of an existing motion under Fed. R. Civ. P. 52 "shall have no effect." Fed. R. App. P. 4(a)(4)(ii); **see Griggs v. Provident Consumer Discount Co.**, 459 U.S. 56, 61, 103 S.Ct. 400, 74

L.Ed.2d 225 (1982); **Davidson v. Sun Exploration & Production Co.**, 857 F.2d 988, 989 (5th Cir. 1988).

The question remains whether Hatten's unilateral and unacknowledged attempt to withdraw his rule 52 motion amounts to a "disposition" of his motion and thereby divested the district court of jurisdiction and created appellate jurisdiction. As this Court noted in **Ellison v. Conoco, Inc.**, 950 F.2d 1196 (5th Cir. 1992), **cert. denied**, 61 U.S.L.W. 3852 (U.S. Jun. 21, 1993) (No. 92-8122), "Rule 4(a)(4) does not demand the formality of a judgment, but rather merely the entry of an *order* that clearly disposes of the post-trial motion." **Id**. at 1201. There has been no such order entered in the instant case. There has, in fact, been no acknowledgement at all by the district court of Hatten's attempt to withdraw his rule 52 motion. We conclude that Hatten's unilateral motion does not constitute a "disposition" of the motion and we still have no jurisdiction over this appeal.

Hatten has also included a motion for a continuance in order to file a reply brief. This motion is moot and is denied.

APPEAL DISMISSED.

MOTION DENIED.