

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-41064
Conference Calendar

IN RE: DANIEL JOHNSON SHEEHAN

Movant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:98-MC-14
- - - - -

April 19, 1999

Before JONES, SMITH, and DUHÉ, Circuit Judges.

PER CURIAM:*

In addressing Daniel John Sheehan's** motion for authorization to file a second or successive 28 U.S.C. § 2254 petition in the district court, this court entered a limited remand for the district court to determine whether Sheehan's claims in his proposed petition were successive. In Re Sheehan, No. 98-00096 (5th Cir. May 5, 1998). Following the remand, we denied Sheehan's motion for authorization with regard to the 1991 and 1992 revocations of his supervised release because he failed to make a prima facie showing that the proposed petition would involve either newly discovered evidence or a new rule of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

** Texas prisoner # 426771

constitutional law that was previously unavailable, and we denied as unnecessary Sheehan's motion for authorization with regard to his challenge to the 1996 revocation of supervised release because it appeared that this would be his first § 2254 petition challenging that revocation. In Re Sheehan, No. 98-00096 (5th Cir. Aug. 18, 1998).

Sheehan has filed several motions in his attempt to appeal the district court's order on remand. He concedes that there was no final judgment and moves for dismissal of the appeal without prejudice. Out of "an abundance of caution," he moves for a certificate of appealability (COA). He then "moves the court to grant interlocutory appeal status." He also requests disclosure of "archive records" and waiver of any related fees and moves for leave to proceed in forma pauperis (IFP).

Pursuant to 28 U.S.C. § 2244(b)(3)(A), Sheehan's proposed § 2254 petition was not filed in the district court, thus there is no appealable final judgment or order. To the extent Sheehan seeks to challenge the denial of his motion for authorization, that decision is not appealable. 28 U.S.C. § 2244(b)(2)(E). We DISMISS the appeal for lack of jurisdiction. Sheehan's motions are DENIED as MOOT.

We caution Sheehan that vexatious motions and frivolous appeals filed by him or on his behalf will invite the imposition of sanctions. To avoid sanctions, Sheehan should review any pending motions or appeals to ensure that they do not raise arguments that are frivolous.

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APPEAL DISMISSED; MOTIONS DENIED AS MOOT; SANCTIONS WARNING
ISSUED.