

# United States Court of Appeals for the Fifth Circuit

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No. 23-10693  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit  
**FILED**  
September 15, 2023

Lyle W. Cayce  
Clerk

GEORGE RAY DAVIS,

*Petitioner—Appellant,*

*versus*

BOBBY LUMPKIN, *Director, Texas Department of Criminal Justice,  
Correctional Institutions Division,*

*Respondent—Appellee.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:22-CV-60

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Before STEWART, CLEMENT, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:\*

George Ray Davis, Texas prisoner # 02297512, moves for leave to proceed in forma pauperis (IFP) in his appeal of the district court's denial of his motion to stay his 28 U.S.C. § 2254 proceeding. Davis sought to stay his § 2254 proceeding so that he could return to state court to exhaust various claims that he contended arose after he discovered new exculpatory

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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evidence. He contends that the district court erred in denying his stay motion under the rubric set forth in *Rhines v. Weber*, 544 U.S. 269, 277-78 (2005).

As a threshold matter, we must examine the basis of our jurisdiction to hear this appeal. *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). We may only exercise jurisdiction over final orders and certain interlocutory orders. *See* 28 U.S.C. § 1291; 28 U.S.C. § 1292; *Dardar v. Lafourche Realty Co.*, 849 F.2d 955, 957 (5th Cir. 1988). Here, because the district court's order denying Davis's motion to stay his § 2254 proceeding is neither a final order nor an appealable interlocutory or collateral order, we lack jurisdiction to consider his appeal from that order. *See Grace v. Vannoy*, 826 F.3d 813, 816-21 (5th Cir. 2016); *Dardar*, 849 F.2d at 957.

Accordingly, Davis's motion to proceed IFP is DENIED, and his appeal is DISMISSED for lack of jurisdiction. *See Grace*, 826 F.3d at 820-21.