

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

SHELDON K. NASH,

Petitioner,

v.

CASE NO. 06-3158-SAC

DAVID R. MCKUNE,
et al.,

Respondents.

O R D E R

This petition for writ of habeas corpus, 28 U.S.C. 2254, submitted by a Kansas inmate was found to be "second or successive" under 28 U.S.C. 2244(b)(3)(A), and transferred to the United States Court of Appeals for the Tenth Circuit for a determination of whether or not authorization to proceed should be granted. The case was terminated at the time of the transfer by this court on June 28, 2006. The Tenth Circuit denied authorization, and the matter was dismissed by that court on August 24, 2006.

The docket indicates a pending motion in this court: petitioner's "Motion for Certificate of Appealability" (Doc. 3), which was a document submitted with the original Petition. This was not a proper motion substantively, because there had been no order entered in the case from which to appeal. Moreover, this court had no authority to decide a motion in this second and successive case unless and until authorization was granted to proceed at the district court level. Authorization was denied, and the case has since been dismissed by both courts. The motion should have been terminated with the action. However, the unique procedures for "second and successive" petitions seem to conflict with the record keeping procedures regarding pending motions and create

administrative confusion. Thus, in the interest of record clarity, the motion is now dismissed as improper, unauthorized, and moot.

IT IS THEREFORE ORDERED that petitioner's Motion for Certificate of Appealability (Doc. 3) is denied as improper, unauthorized, and moot.

IT IS SO ORDERED.

Dated this 14th day of September, 2006, at Topeka, Kansas.

s/Sam A. Crow
U. S. Senior District Judge