

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JAMES DAVID THORNBRUGH,)	
)	
Petitioner,)	
)	CIVIL ACTION
v.)	
)	No. 14-3105-KHV
CLAUDE MAYE,)	
)	
Respondent.)	
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MEMORANDUM AND ORDER

On September 14, 2015, petitioner filed a Motion For Clarification Of The Record And Order Of 09-02-2015 And To Hold In Abeyance Pending Outcome Of Petition Filed in Sentencing Court After This Courts Denial Without Prejudice, (Doc. #12).

Background

On November 6, 2014, the Honorable Richard D. Rogers dismissed this petition for habeas corpus, finding that petitioner could not proceed under 28 U.S.C. § 2241 and must seek relief in the sentencing court, the U.S. District Court for the Northern District of Oklahoma, under 28 U.S.C. § 2255. On February 27, 2015, the clerk of this court received correspondence from petitioner concerning the status of an appeal from that dismissal. No notice of appeal appeared on the court's docket, and the clerk docketed the correspondence as a motion to proceed on appeal in forma pauperis. Judge Rogers directed petitioner to supplement the record with a statement of the date of the notice of appeal and financial information to support the motion to proceed in forma pauperis. Petitioner replied that he had commenced a second action

in the sentencing court¹ under 28 U.S.C. § 2255. He failed to submit the financial statement. On September 2, 2015, the Court found that petitioner had abandoned his appeal and denied leave to proceed on appeal in forma pauperis.

On September 14, 2015, petitioner filed the present motion for clarification of that order and seeking a stay pending the resolution of his second action under Section 2255.

Nine days later, on September 23, 2015, the sentencing court dismissed petitioner's second action under Section 2255 for lack of jurisdiction. On March 15, 2016 the U.S. Court of Appeals for the Tenth Circuit dismissed his appeal from that decision. United States v. Thornbrugh, ___ Fed. Appx. ___, 2016 WL 1019203 (10th Cir. Mar. 15, 2016). Petitioner's motion to hold this matter in abeyance is therefore moot.

Petitioner seeks relief from the Court's decision that he abandoned his appeal in this action by failing to submit a financial statement as directed. The Court finds no basis to grant relief. Petitioner failed to comply with a court order or otherwise to diligently pursue an appeal.

IT IS THEREFORE ORDERED that petitioner's Motion For Clarification Of The Record And Order Of 09-02-2015 And To Hold In Abeyance Pending Outcome Of Petition Filed In Sentencing Court After This Courts Denial Without Prejudice (Doc. #12) filed September 14, 2015 be and hereby is **OVERRULED**.

¹ Petitioner titled that action a "Petition under Section 2255, in the Alternative a Writ of Habeas Corpus under 28 U.S.C. 2241, or a Writ of Coram Nobis under the All Writs Act, 28 U.S.C. 1651." U.S. v. Thornbrugh, ___ Fed. Appx. ___, 2016 WL 1019203, *2 (10th Cir. Mar. 15, 2016).

Dated this 27th day of June, 2016 at Kansas City, Kansas.

S/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge