

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ROBERT DEAN BLAUROCK,

Petitioner,

v.

CASE NO. 21-3231-SAC

STATE OF KANSAS, et al.,

Respondents.

MEMORANDUM AND ORDER

This matter comes before the Court on Petitioner's motion for relief from judgment (Doc. 10) and his motion to consolidate two cases on appeal (Doc. 12). For the reasons stated below, both motions are denied.

Motion for Relief from Judgment (Doc. 10)

On September 28, 2021, the Court dismissed the petition in this action as an unauthorized and successive petition. (Doc. 3.) Petitioner moves for relief from judgment under Rule 60 of the Federal Rules of Civil Procedure, arguing that his petition was not successive because, although he raised his claim in an earlier § 2254 petition, the Court did not rule on it in that action. (Doc. 10.)

The Court lacks jurisdiction to consider the motion. "[T]he general rule is that, when a litigant files a notice of appeal, the district court loses jurisdiction over the case, save for 'collateral matters not involved in the appeal.'" *McKissick v. Yuen*, 618 F.3d 1177, 1196 *19th Cir. 2010) (quoting *Lancaster v. Indep. Sch. Dist. No. 5*, 149 F.3d 1228, 1237 ()10th Cir. 1998)). Petitioner

has filed a notice of appeal from the Court's dismissal of this action. Moreover, the Court's conclusion that the petition filed in this case was unauthorized and successive is at the heart of Petitioner's current appeal; it is not a collateral matter. Accordingly, the Court denies the motion for relief from judgment for lack of jurisdiction.

Motion to Consolidate (Doc. 12)

On September 10, under case number 21-cv-3217-SAC, Petitioner filed a petition for writ of habeas corpus under § 2254 petition, which the Court dismissed on September 15, 2021 as an unauthorized second or successive petition for writ of habeas corpus under 28 U.S.C. § 2254. *See Blaurock v. Kansas*, case number 21-cv-3217-SAC. Petitioner filed his notice of appeal to the Tenth Circuit Court of Appeals on September 24, and the appeal was docketed. *Id.* The same day, Petitioner filed the § 2254 petition in this case, which the Court dismissed four days later as unauthorized and successive. (Docs. 1, 3.) Petitioner filed a notice of appeal of that dismissal on October 15, 2021 and that appeal also has been docketed in the Tenth Circuit. (Docs. 7, 9.)

Petitioner has now filed in this Court a motion to consolidate the two cases for appeal purposes. (Doc. `17.) He asserts that consolidation will serve the interests of judicial economy and reduce his appellate filing costs. *Id.* The decision whether to consolidate cases that are already on appeal rests with the Tenth Circuit, not this Court. If Petitioner wishes to consolidate his appeals, he should file a motion to consolidate in the Tenth Circuit.¹

¹ The mailing address for the Tenth Circuit is The Byron White U.S. Courthouse,

IT IS THEREFORE ORDERED that Petitioner's motion for relief from judgment (Doc. 10) and his motion to consolidate (Doc. 12) are **denied.**

IT IS SO ORDERED.

DATED: This 19th day of October, 2021, at Topeka, Kansas.

S/ Sam A. Crow

SAM A. CROW

U.S. Senior District Judge