

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

November 2, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

ALVIN PARKER,

Petitioner - Appellant,

v.

TERRY MARTIN, Warden,

Respondent - Appellee.

No. 23-6088
(D.C. No. 5:13-CV-01365-D)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **McHUGH, MURPHY, and CARSON**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Alvin Parker appeals from the district court’s order denying his pro se Motion for Appointment of Counsel. Parker sought appointment of counsel to assist him in filing a petition for writ of certiorari from the Supreme Court allowing it to review this court’s decision in *Parker v. Martin*, No. 23-6033, 2023 WL 3335309 (10th Cir.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

May 10, 2023) (denying Parker a certificate of appealability (“COA”) and dismissing his appeal from the denial of his Fed. R. Civ. P. 60(d)(3) motion). This court has subject matter jurisdiction over Parker’s appeal pursuant to 28 U.S.C. § 1291. *See Harbison v. Bell*, 556 U.S. 180, 183 (2009) (holding that an appellant need not obtain a COA to appeal a district court order denying a request for appointment of counsel); *see also generally Graff v. Aberdeen Enterprizes, II, Inc.*, 65 F.4th 500, 507 n.6 (10th Cir. 2023) (explaining the meaning of “subject matter jurisdiction”). Nevertheless, because this appeal is moot, we lack Article III jurisdiction. Accordingly, Parker’s appeal is, hereby, **dismissed**.

For those reasons set out by this court in *United States v. Reynoso*, No. 22-2119, 2023 WL 3017136, at *3–4 (10th Cir. April 20, 2023) (unpublished disposition), Parker’s appeal from the district court’s denial of his motion for appointment of counsel is moot. Although *Reynoso* is unpublished and, therefore, not binding on this panel, we conclude its analysis is entirely persuasive and adopt it in full.

This court further notes the following considerations in relation to the arguments set out in Parker’s reply brief. Although the motion for appointment of counsel in *Reynoso* was moot when it was filed in the district court, *see id.*, the requirement of a live case or controversy persists through each stage of litigation. *Fleming v. Gutierrez*, 785 F.3d 442, 445 (10th Cir. 2015) (“[I]f an event occurs while a case is pending on appeal that makes it impossible for the court to grant any effectual relief whatever to a prevailing party, we must dismiss the case, rather than

issue an advisory opinion.” (quotation omitted)). Here, just such an event occurred—the ninety-day statutory time limit for filing a certiorari petition, along with the sixty-day for-good-cause extension period, expired. *See* 28 U.S.C. § 2101(c); *see also Fed. Election Comm’n v. NRA Political Victory Fund*, 513 U.S. 88, 90 (1994) (holding that the statutory time limits set out in § 2101(c) are jurisdictional). In that regard, the conclusion this appeal is moot is even stronger than in *Reynoso*, a criminal case involving time limits set out in the Rules of the Supreme Court of the United States, rather than statutory time limits. *See Schacht v. United States*, 398 U.S. 58, 63–64 (1970) (holding that time limits set out in the Court’s own rules are subject to waiver); *see also* R. of U.S. Sup. Ct. 13(2) (“The Clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time. *See, e.g.,* 28 U.S.C. § 2101(c).”). Parker’s assertion *Reynoso*’s analysis does not apply because he filed in the Supreme Court on July 27, 2023, a motion for extension of time to file a certiorari petition is unavailing for two reasons. First, the jurisdictional time limit set out in § 2101(c) has run and Parker does not allege he received the requested extension. Second, there exists no indication on the Supreme Court’s docket it ever received such a request for extension.

For those reasons set out above, this appeal is hereby **DISMISSED**. Because this appeal is moot, all pending motions are **DENIED**.

Entered for the Court

Michael R. Murphy
Circuit Judge