

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 15, 2017

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WALTER ELIYAH THODY,

Defendant - Appellant.

Nos. 17-7012 & 17-7013
(D.C. No. 6:91-CR-00051-JHP-1)
(E.D. Okla.)

ORDER AND JUDGMENT*

Before **HARTZ, McKAY**, and **MATHESON**, Circuit Judges.

Pro se appellant Walter Thody challenges his convictions for crimes he committed in 1991. The district court dismissed the underlying matter for violation of the court's valid order to restrict abusive filings. The district court's judgment is affirmed. Mr. Thody's motion to proceed in forma pauperis (IFP) on appeal is denied.

* 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. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

FILING RESTRICTIONS

This court has twice rejected Mr. Thody's post-conviction attempts to overturn his 1991 conviction. *United States v. Thody*, 460 F. App'x 776 (10th Cir. 2012); *United States v. Thody*, 569 F. App'x 592 (10th Cir. 2014). In the latter appeal, this court denied the government's request to impose filing restrictions on Mr. Thody, finding them unnecessary because the district court had imposed restrictions. 569 F. App'x at 593 n.2. We now determine that filing restrictions are appropriate in light of the appeals noted above and Mr. Thody's continued and repeated violations of the district court's filing restrictions entered December 18, 2013.

Consequently, we impose restrictions on his filings in this court, whether or not he pays a full filing fee. The filing restrictions apply to further appeals from the district court's denial of post-conviction motions in his underlying criminal case, district court case No. CR-91-51-1, convictions affirmed on appeal, *United States v. Thody*, No. 92-7013, 978 F.2d 625 (10th Cir. 1992). Mr. Thody is enjoined from proceeding as an appellant or a petitioner without the representation of a licensed attorney admitted to practice in this court, unless he first obtains permission to proceed pro se. To do so, he must take the following steps:

1. File a petition with the clerk of this court requesting leave to file a pro se proceeding;
2. Include in the petition the following information:

a. A list, by case name, number, and citation where applicable, of all proceedings currently pending or filed previously in this court by Mr. Thody, with a statement indicating the current status or disposition of each proceeding;

b. A list apprising this court of all outstanding injunctions, contempt orders, or other judicial directions limiting his access to state or federal court, including orders and injunctions requiring him to be represented by an attorney; said list to include the name, number, and citation, if applicable, of all such orders and injunctions;

3. File with the clerk a notarized affidavit, in proper legal form, which recites the issues he seeks to present, including a particularized description of the order or ruling being challenged and a short statement of the legal basis asserted for the challenge. The affidavit must also certify, to the best of his knowledge, that the legal arguments advanced are not frivolous or made in bad faith; that they are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; that the appeal or other proceeding is not interposed for any improper purpose; and that he will comply with all federal appellate rules and local rules of this court.

These documents shall be submitted to the clerk of this court, who shall forward them to the court for review to determine whether to permit the pro se appeal or other proceeding. Without the court's approval, the matter will not proceed. If the court approves the submission, an order will be entered indicating that the matter

shall proceed in accordance with the Federal Rules of Appellate Procedure and the Tenth Circuit Rules. Only at that juncture will the appeal or other proceeding formally be filed in this court.

Mr. Thody shall have ten days from the date of this order and judgment to file written objections, limited to fifteen pages, to these proposed restrictions. Unless this court orders otherwise upon review of any objections, the restrictions shall take effect twenty days from the date of this order and judgment and shall apply to any matter filed by Mr. Thody with this court after that time.

CONCLUSION

The district court's judgment dismissing the underlying matter is affirmed. Mr. Thody's IFP motion is denied. He has not offered "a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." *McIntosh v. U.S. Parole Comm'n*, 115 F.3d 809, 812 (10th Cir. 1997) (internal quotation marks omitted). Therefore, immediate payment of the unpaid balance of the appellate filing fee is due. The filing restrictions set forth herein shall be imposed upon Mr. Thody unless this court orders otherwise upon review of timely filed written objections.

Entered for the Court

Monroe G. McKay
Circuit Judge