

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

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August 12, 2021

Clerk - Northern District of Georgia  
Richard B. Russell Bldg & US Courthouse  
2211 UNITED STATES COURTHOUSE  
75 TED TURNER DR SW  
STE 2211  
ATLANTA, GA 30303-3309

Appeal Number: 21-10654-E  
Case Style: Jermaine Spence v. State of Georgia ex rel., et al  
District Court Docket No: 1:18-cv-05003-SCJ

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Gloria M. Powell, E  
Phone #: (404) 335-6184

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 21-10654-E

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JERMAINE E. SPENCE,

Petitioner-Appellant,

versus

STATE OF GEORGIA EX REL.,  
DISTRICT ATTORNEY PAUL HOWARD,

Defendants-Appellees.

---

Appeal from the United States District Court  
for the Northern District of Georgia

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ORDER:

Jermaine Spence's motion for a COA is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). His motion for leave to proceed on appeal *in forma pauperis* is DENIED AS MOOT.

  
UNITED STATES CIRCUIT JUDGE

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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April 29, 2021

Jermaine E. Spence  
PO BOX 829  
ATLANTA, GA 30311

Appeal Number: 21-10654-E  
Case Style: Jermaine Spence v. State of Georgia ex rel., et al  
District Court Docket No: 1:18-cv-05003-SCJ

NOTICE OF APPEAL FILED: February 18, 2021

After review of the district court docket entries, order and/or judgment appealed from, and the notice of appeal, it appears that this court may lack jurisdiction over this appeal. If it is determined that this court is without jurisdiction, this appeal will be dismissed.

The parties are requested to simultaneously advise the court in writing within fourteen (14) days from the date of this letter of their position regarding the jurisdictional question(s) set forth on the attached page. Counsel must submit their response electronically, and do not need to provide paper copies. The responses must include a Certificate of Interested Persons and Corporate Disclosure Statement as described in Fed.R.App.P. 26.1 and the corresponding circuit rules. Requests for extensions of time to file a response are disfavored.

After fourteen (14) days, this court will consider any response(s) filed and any portion of the record that may be required to resolve the jurisdictional issue(s). Please note that the issuance of a jurisdictional question does not stay the time for filing appellant's briefs otherwise provided by 11th Cir. R. 31-1.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Gloria M. Powell, E  
Phone #: (404) 335-6184

Enclosure(s)

JUR-1 Resp reqd JQ

No. 21-10654-E

## JURISDICTIONAL QUESTION

Please address what order(s) the notice of appeal evinces an intent to appeal, outside of the district court's February 2, 2021 order denying the motion for reconsideration. *See* Fed. R. App. P. 3(c) (requiring a notice of appeal to "designate the judgment, order, or part thereof being appealed"); *Becker v. Montgomery*, 532 U.S. 757, 767 (2001) ("[I]mperfections in noticing an appeal should not be fatal where no genuine doubt exists about who is appealing, from what judgment, to which appellate court."); *Smith v. Barry*, 502 U.S. 244, 248 (1992) ("Although courts should construe Rule 3 liberally when determining whether it has been complied with, noncompliance is fatal to an appeal."); *see also Davila v. Gladden*, 777 F.3d 1198, 1208 n.5 (11th Cir. 2015) (noting that this Court always liberally construes a *pro se* party's pleadings, including the notice of appeal).

To the extent that the notice of appeal evinces an intent to appeal any order(s) besides the district court's February 2, 2021 order, please address whether the notice of appeal is timely to appeal the other order(s). *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A); *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 21 (2017) (explaining that the timely filing of a notice of appeal in a civil case is a jurisdictional requirement, and courts cannot entertain an appeal that is out of time); *Green v. Drug Enf't Admin.*, 606 F.3d 1296, 1300–02 (11th Cir. 2010); *see also* Fed. R. App. P. 4(a)(4)(A)(iv), (vi) (stating that the filing of a motion for reconsideration within 28 days of a judgment tolls the time period for filing a notice of appeal); *Advanced Bodycare Solutions, LLC*, 615 F.3d at 1359 n.15 (stating that an untimely Rule 4(a)(4) motion does not toll the time to appeal).

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

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June 03, 2021

Jermaine E. Spence  
PO BOX 829  
ATLANTA, GA 30301

Appeal Number: 21-10654-E  
Case Style: Jermaine Spence v. State of Georgia ex rel., et al  
District Court Docket No: 1:18-cv-05003-SCJ

We have received a copy of the order of the district court declining to issue a certificate of appealability. Rule 22(b) of the Federal Rules of Appellate Procedure provides in part:

If the district court has denied the certificate, the applicant for the writ may then request issuance of the certificate by a circuit judge. If such a request is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges, as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals.

The notice of appeal will be treated as a request for a certificate of appealability unless appellant files such a request within fourteen (14) days from the date of this letter.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Gloria M. Powell, E/ abm  
Phone #: (404) 335-6184

HAB-3 COA Denied DC

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

JERMAINE E. SPENCE,	:	
Petitioner,	:	
	:	
	:	CIVIL ACTION NO.
v.	:	1:18-CV-5003-SCJ
	:	
PAUL HOWARD, et. al.,	:	
Respondents.	:	

**ORDER**

Petitioner initiated this 28 U.S.C. § 2241 action challenging his detention at the Georgia Regional Hospital in Savannah, Georgia, where he was being held for a psychological evaluation to determine his capacity to stand trial in the Superior Court of Fulton County. Soon after he filed the petition, the state court nolle prossed the criminal action against Petitioner, and he was released. Accordingly, on February 27, 2019, this Court dismissed the matter as moot. [Doc. 15].

Almost eighteen months later, Petitioner filed a motion for reconsideration, [Doc. 18], in which he sought an order expunging six orders by a state court that adjudged him to be mentally incompetent. This Court denied that motion after determining that, because he is no longer in custody, this Court lacks jurisdiction over his claims under § 2241, and, in any event, this Court cannot grant the relief he seeks

under the Rooker/Feldman<sup>1</sup> doctrine. Petitioner has now filed a notice of appeal, [Doc. 24 as amended Doc. 29], which, according to the Eleventh Circuit, [Doc. 36], must be construed as a motion for a certificate of appealability.

Having again reviewed the record, this Court concludes that Petitioner has failed to make “a substantial showing of the denial of a constitutional right,” and a Certificate of Appealability, [Doc. 24 as amended Doc. 29], is **DENIED** pursuant to 28 U.S.C. § 2253(c)(2).

**IT IS SO ORDERED**, this 5th day of May, 2021.

s/Steve C. Jones

HONORABLE STEVE C. JONES  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> See Rooker v. Fid. Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1986). Under the Rooker/Feldman doctrine, this Court lacks jurisdiction to review state court orders.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

JERMAINE E. SPENCE,	:	
Petitioner,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:18-CV-5003-SCJ
	:	
PAUL HOWARD, et. al.,	:	
Respondents.	:	

**ORDER**

Petitioner initiated this 28 U.S.C. § 2241 action challenging his detention at the Georgia Regional Hospital in Savannah, Georgia, where he was being held for a psychological evaluation to determine his capacity to stand trial in the Superior Court of Fulton County. Soon after he filed the petition, the state court nolle prossed the criminal action against Petitioner, and he was released. Accordingly, on February 27, 2019, this Court dismissed the matter as moot. [Doc. 15].

Almost eighteen months later, Petitioner filed a motion for reconsideration, [Doc. 18], in which he sought an order expunging six orders by a state court that adjudged him to be mentally incompetent. This Court denied that motion after determining that, because he is no longer in custody, this Court lacks jurisdiction over his claims under § 2241, and, in any event, this Court cannot grant the relief he seeks



under the Rooker/Feldman<sup>1</sup> doctrine. Petitioner has now filed an application to appeal *in forma pauperis*, [Doc. 23] and a motion to amend the application to appeal *in forma pauperis*, [Doc. 34].

Having reviewed the record, this Court now **CERTIFIES** that Petitioner's appeal is not taken in good faith, and leave to proceed *in forma pauperis* on appeal, [Doc. 23], is **DENIED** pursuant to 28 U.S.C. § 1915(a)(3), and Petitioner's motion to amend his application, [Doc. 34], is **DENIED** as moot. The Clerk is **DIRECTED** to forward a copy of this Order to the Eleventh Circuit Court of Appeals.

**IT IS SO ORDERED**, this 2nd day of April, 2021.

s/Steve C. Jones  
HONORABLE STEVE C. JONES  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> See Rooker v. Fid. Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1986). Under the Rooker/Feldman doctrine, this Court lacks jurisdiction to review state court orders.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

TERMAINE E. SPENCE,  
Petitioner,

CIVIL ACTION NO.  
1:18-CV-5003-SCJ

v.  
PAUL HOWARD, et al.,  
Respondents.

ORDER

Petitioner initiated this 28 U.S.C. § 2241 action challenging his detention at the Georgia Regional Hospital in Savannah, Georgia, where he was being held for a psychological evaluation to determine his capacity to stand trial in the Superior Court of Fulton County. Soon after he filed the petition, the state court nolle pressed the criminal action against Petitioner, and he was released. Accordingly, on February 27, 2019, this Court dismissed the matter as moot. [Doc. 15].

Petitioner has now filed a motion for reconsideration, [Doc. 18], in which he contends that this matter should not have been dismissed because this Court ignored some of the relief that he requested. According to Petitioner, the state court entered six orders that adjudged him to be mentally incompetent, and in his petition he sought an order expunging, withdrawing and requiring the "destruction" of those orders. Petitioner contends that this demand for relief remains ripe and capable of resolution.

However, this Court cannot grant the relief that Petitioner seeks for at least two reasons. The first reason is that Petitioner initiated this action under 28 U.S.C. § 2241, and claims brought under that provision are limited to "challenge[s] to custody alleged to be in violation of the Constitution or laws of the United States." Louis v. Sec'y, Fla. Dep't of Corr., 524 F. App'x 583, 584 (11th Cir. 2013) (citing 28 U.S.C. § 2241(c)). Put simply, relief under § 2241 cannot extend to a petitioner unless he is in custody. 28 U.S.C. § 2241(c). "[A]bsent custody by the authority against whom relief is sought, jurisdiction will not lie to grantive writ." Gonzales-Corralles v. I.C.H., 522 F. App'x 619, 623 (11th Cir. 2013) (citing Orozco v. U.S.I.N.S., 911 F.2d 539, 541 (11th Cir. 1990)). Petitioner is not in custody, and even if he were, he seeks relief (presumably) against the Superior Court of Fulton County, which is not his custodian. Accordingly, this Court lacks jurisdiction under § 2241 to grant the relief Petitioner seeks.

The second reason is that, under the Rooker/Feldman<sup>1</sup> doctrine, federal district courts (like this one) lack subject matter jurisdiction to review, reverse, or invalidate a state court order. Nicholson v. Shale, 558 F.3d 1266, 1268 (11th Cir.2009). The doctrine applies to cases in which a party complains of injuries caused by a state court

<sup>1</sup> See Rooker v. Felt Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1986).

judgment and invites the district court to review and reverse that judgment. Exxon Mobil Corp. v. Saudi Basic Indus., 544 U.S. 280, 284 (2005). Accordingly, this Court also lacks subject matter jurisdiction to grant the relief sought under any other provision.

Accordingly, Petitioner's motion for reconsideration, [Doc. 18], is **DENIED**.

**IT IS SO ORDERED**, this 2nd day of February, 2021.

/Steve C. Jones  
HONORABLE STEVE C. JONES  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JERMAINE E. SPENCE,  
GDC ID #1093843,

Petitioner,

v.

DIST. ATTY. PAUL HOWARD, et al.,

Respondents.

PRISONER HABEAS CORPUS  
28 U.S.C. § 2241

CIVIL ACTION FILE

NO. 1:18-CV-5003-SCJ

**ORDER**

This matter is before the Court for consideration of the Final Report and Recommendation ("R&R") of Magistrate Judge J. Clay Fuller [Doc. No. 13], to which no objections have been filed. After reviewing the Report & Recommendation, it is received with approval and **ADOPTED** as the Opinion and Order of this Court.

Accordingly, this habeas corpus action is **DISMISSED as moot**. It is further **ORDERED** that Petitioner's procedural motions [Doc. Nos. 4-7 and 10] are similarly **DENIED as moot**.

**IT IS SO ORDERED**, this 27<sup>th</sup> day of February, 2019.

s/Steve C. Jones

STEVE C. JONES

UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**JERMAINE E. SPENCE,**  
**GDC ID # 1093843,**  
**Petitioner,**

**CIVIL ACTION NO.**  
**1:18-CV-05003-SCJ-JCF**

**v.**

**DIST. ATTY. PAUL HOWARD, et. al.,**  
**Respondents.**

**HABEAS CORPUS**  
**28 U.S.C. § 2241**

**ORDER FOR SERVICE OF REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

The Report and Recommendation of the United States Magistrate Judge, made in accordance with 28 U.S.C. § 636(b)(1) and this Court's Local Rule 72, has been filed. The Clerk is **DIRECTED** to serve a copy, together with a copy of this Order, upon counsel for the parties and upon any unrepresented parties.

Within 14 days of service of this Order, a party may file written objections, if any, to the Report and Recommendation. See 28 U.S.C. § 636(b)(1)(C). Should objections be filed, they shall specify with particularity the alleged error or errors made (including reference by page number to the transcript if applicable) and shall be served upon the opposing party. The party filing objections will be responsible for obtaining and filing the transcript of any evidentiary hearing for review by the District Court.

A party that fails to object to a magistrate judge's findings or recommendations contained in a Report and Recommendation waives the right to challenge on appeal the District Court's order based on any factual or legal conclusions and/or recommendations in the Report to which the party did not timely object. If no objections are filed, the Report and Recommendation may be adopted as the order of the District Court, and any appellate review of the factual and legal findings will be limited to a plain error review. *See 11th Cir. R. 3-1.*

The Clerk is **DIRECTED** to submit the Report and Recommendation with objections, if any, to the District Court after expiration of the above time period.

**IT IS SO ORDERED**, this 8th day of February, 2019.

/s/ J. Clay Fuller  
J. Clay Fuller  
United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**JERMAINE E. SPENCE,  
GDC ID # 1093843,  
Petitioner,**

**v.**

**DIST. ATTY. PAUL HOWARD, et. al.,  
Respondents.**

**CIVIL ACTION NO.  
1:18-CV-05003-SCJ-JCF**

**HABEAS CORPUS  
28 U.S.C. § 2241**

**MAGISTRATE JUDGE'S FINAL REPORT AND RECOMMENDATION**

In his 28 U.S.C. § 2241 habeas corpus petition, signed and filed on October 22, 2018, Petitioner indicated that he was in state custody at the Georgia Regional Hospital in Savannah, Georgia, for psychological evaluation to determine his capacity to stand trial in the Superior Court of Fulton County. He filed the petition seeking an end to that custody. (Doc. 1; see Doc. 2). In a notice signed and filed on December 22, 2018, Petitioner indicated that his mailing address had changed to P.O. Box 829 in Atlanta, Georgia. (Doc. 8). The Court then ordered the parties to provide updated information as to Petitioner's whereabouts. (Doc. 11). The Fulton County District Attorney did not respond.

Petitioner, on the other hand, has expanded on his previous notice by stating the following:

A. As the criminal allegations of the case were groundless, Ind[ictment] # 10SC90358 at the Superior Court of Fulton County was dispositioned as Nolle Prosequi in December 2018.

B. Therefore, in regards to the Honorable Magistrate Court's request[,] Mr. Spence is no longer in the [custody of the] State of Georgia - Dept. of Beh. Health and Dev. Dis.[] and no longer in the custody of the State of Georgia - County of Fulton County - Office of the Sheriff.

C. Mr. Spence is renting a room at the family home in Albany, Georgia.

(Doc. 12 at 1). An independent review of Fulton County Superior Court records reveals that Petitioner's case #10SC90358 was indeed nolle prossed, on December 13, 2018, and that there are no other criminal charges pending in Fulton County against Petitioner.<sup>1</sup>

Petitioner has thus obtained all the relief he was seeking, or at least that this Court is authorized to grant, in this habeas action — which, therefore, is now moot. *See United States v. Serrapio*, 754 F.3d 1312, 1317 (11th Cir. 2014) (holding that appeal of 45-day sentence was moot because appellant “finished serving that term some time ago, and it is impossible for [us] to grant [him] any effectual relief” (internal quotations omitted)); *Gorrell v. Hastings*, 541 Fed. Appx. 943, 946 (11th

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<sup>1</sup>See <http://justice.fultoncountyga.gov/PASupCrtCM/Search.aspx?ID=100> for Jermaine Spence (last visited Feb. 8, 2019).



Cir. 2013) (“A claim must be dismissed as moot if the issue presented is no longer ‘live,’ such that the courts cannot grant meaningful relief.”).<sup>2</sup>

**IT IS THEREFORE RECOMMENDED** that this habeas corpus action be **DISMISSED** as moot and that Petitioner’s pending procedural motions (Docs. 4-7, 10) be **DENIED** as moot.

The Clerk is **DIRECTED** to withdraw the reference to the Magistrate Judge.

**SO RECOMMENDED** this 8th day of February, 2019.

/s/ J. Clay Fuller  
J. Clay Fuller  
United States Magistrate Judge

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<sup>2</sup> Petitioner also asks, in his latest pleading, that this Court: (1) “issue a finding that [he] is ‘Competent’ ”; (2) order that the March 2017 Fulton County Superior Court order continuing his civil commitment be withdrawn and destroyed; and (3) “issue a finding that no Georgia court is allowed to invoke any part of [O.C.G.A. §] 17-6 et seq. in order to civilly commit an accused, in this case [Petitioner], to a state hospital.” (Doc. 12 at 2-3). This Court need not address these requests via federal habeas review of a matter that is now moot. To the extent that Petitioner seeks an order that he not be civilly committed in the future, a claim in that regard is not properly before the Court. See *Jeffus v. Fla. Dep’t of Corr.*, 18-12051, 2018 U.S. App. LEXIS 35521, at \*6 (11th Cir. Dec. 19, 2018) (citing *Maleng v. Cook*, 490 U.S. 488, 492 (1989), to the effect that the collateral consequences of a prior custody are generally insufficient to form the basis for a challenge to the effect of that prior custody on a possible future custody); *Williams v. Carter*, 253 Fed. Appx. 914, 915 (11th Cir. 2007) (“Normally, when a habeas petitioner elects to attack only his [custody], and the [custody] expires before final adjudication, the case is moot.”).