

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EARL D. PHIFFER,

ORDER

Petitioner,

10-cv-400-slc¹

v.

GREGORY GRAMS, Warden,
Columbia Correctional Institution,

Respondent.

On February 15, 2011, I dismissed petitioner Earl Phiffer's petition for a writ of habeas corpus because he had not shown that he was in custody in violation of his constitutional right to equal protection under the law. On February 22, 2011, petitioner filed a notice of appeal, dkt. #37, and on February 23, he filed a motion for reconsideration of the dismissal of his petition, dkt. #40.

By filing an appeal and motion for reconsideration, petitioner may be seeking to maximize his chances that one court or another will agree with him. However, because the filing of the notice of appeal preceded the filing of the motion for reconsideration, this court

¹ For the purpose of issuing this order, I am assuming jurisdiction over this case.

no longer has jurisdiction over petitioner's case. As the Supreme Court has explained, "[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982). The rationale behind this rule is that "a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously." Id.; see also, Apostol v. Gallion, 870 F.2d 1335, 1337 (1989) ("Someone must be in charge of a case; simultaneous proceedings in multiple forums create confusion and duplication of effort; the notice of appeal and the mandate after its resolution avoid these by allocating control between forums."). Therefore, I cannot give any consideration to petitioner's motion for reconsideration.

ORDER

IT IS ORDERED that petitioner Earl Phiffer's motion for reconsideration, dkt. #40, is DENIED for lack of jurisdiction.

Entered this 7th day of March, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge