No:----------

IN THE

SUPREME COURT OF THE UNITED STATES

NAWAZ AHMED – PETITIONER

Vs.

TIM SHOOP, WARDEN, RESPONDENT

ON APPLICATION TO EXTEND THE FILING DATE BY 60 DAYS TO FILE THE PETITION FOR WRIT OF CERTIORARI AND PETITION FOR EXTRAORDINARY WRIT IN AID OF JURISDICTION.

APPLICATION TO THE CIRCUIT JUSTICE FOR THE SIXTH CIRCUIT

(Sup. Ct. R.30.3; Sup. Ct. Rule 20 and 22 and Rule 39.1,2,4)

NAWAZ AHMED,

A404511,**Prisoner, Pro Se, Petitioner**,

Ross Correctional Institute,

P.O.Box 7010, Chillicothe, OHIO 45601-7010.

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Vs.

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PETITION FOR EXTRAORDINARY WRIT IN AID OF JURISDICTION.

(Sup. Ct. R.30.3; Sup. Ct. Rule 20 and 22 and Rule 39.1,2,4)

1. Petitioner Nawaz Ahmed pro se, seek the filing date extended by additional sixty (60) days to file the Petition for Certiorari and Petition for extraordinary Writ in aid of Jurisdiction. The First Jurisdictionally Sound Appeal case 20-4153 was **dismissed** on March 04,2024 and **rehearing** denied on April 17,2024. See, Rehearing denied by, En banc Nawaz Ahmed v. Shoop, 2024 U.S.App. LEXIS 9334 (6th Cir., Apr. 17, 2024). and

Nawaz Ahmed v. Shoop, 2024 U.S. App. LEXIS 5231 (6th Cir., Mar. 4, 2024)

2. Jurisdiction is founded upon 28 USCS 1254(1) and , 28 U.S.C.S. § 1651(a).

3. PRISON RESTRICTIVE CONDITIONS:

Petitioner is under ADA 42 U.S.C. § 12131 et seq "disability", with multiple permanent medical impairments and is taken as and considered as and actually medically impaired, with cataract in both eyes, vision effected, further limited by diabetics.
Per 42 U.S.C. § 12131 et seq. ("ADA"), a plaintiff must prove: "(1) that he is a 'qualified individual' with a disability; (2) that he was excluded from participation in a public entity's services . . . ; and (3) that such exclusion or discrimination was due to his disability." Hargrave v. Vermont, 340 F.3d 27, 34-35 (2d Cir. 2003). **A state prison's law library constitutes a public service** under the ADA. See generally Pennsylvania Dep't of Corrections v. Yeskey, 524 U.S. 206, 210-11, 118 S. Ct. 1952, 141 L. Ed. 2d 215 (1998). Exclusion may be demonstrated by showing that the defendants failed to provide an "otherwise qualified plaintiff with disabilities **'meaningful access' to the program or services sought**." Henrietta D. v. Bloomberg, 331 F.3d 261, 282-83 (2d Cir. 2003).

Petitioner further respectfully state that as an inmate at Ohio deathrow, the all Ohio deathrow inmates have been recently moved from Chillicothe Correctional Institution(CCI) to Ross Correctional Institution (RCI). The personal property and legal papers are not yet accounted for due to the move. The RCI follows totally different institutional setup and institutional rules, practices and procedures than the CCI. The significant change is severely restricted Law Computer/legal Library use time is insufficient to research, draft, prepare, get timely printed and mailing of the timely and effective pleadings from RCI. Two kites to RCI Warden stated that UMAChief has been asked to review the issue but Deathrow manager, Sgt. and Case manager who all report to UMAChief have adamantly refused to extend the Law Computer use time beyond severely restricted Recreation Hours, called "Day Time". The Same time must also be shared for cell cleaning, showers, grooming, haircut, laundry, work assignments, for printing of computer files by obtaining signatures of case-manager who is not full time employed and not present or available to inmates outside the Recreation-time even for all five working days. By kite policy she has seven days to answer a kit or act on it. Her signatures are mandatory for outgoing legal mail by cash with-drawl slips, and insulin administration also occurs during the same recreation time. Wherefore, same out of cell limited time has to be shared among so many

life activities, leaving very less time for actual legal work on legal computer to research, draft, prepare, print, mail pleadings to courts with the time-deadlines fixed by court rules. *See* *Fengler v. Numismatic Americana, Inc.*, 832 F.2d 745, 747-48 (2d Cir. 1987) (remanding for evidentiary hearing). Reforms taken under the pressure of litigation do not moot claims for injunctive relief unless "subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Parents Involved in Community Schools v. Seattle Sch. Dist. No.* 1, 551 U.S. 701, 719, 127 S. Ct. 2738, 168 L. Ed. 2d 508 (2007) (quotation and alteration omitted).

4. HEALTH/MEDICAL REASONS FOR EXTENSION FOR SIXTY DAYS:

This inmate is approved and tentatively scheduled for eye-Cataract surgery upon availability of the OSU eye surgeon. This inmate is approved and tentatively scheduled for replacement of PaceMaker. Timing of this surgery is also not disclosed but depends upon availability of OSU PaceMaker surgeon. Already petitioner suffers multiple permanent medical impairments, including three heart attacks, bypass surgery, PaceMaker, DVT, swelling of legs, feet, back pain and wears compression stockings. Diabetics-insulin thrice daily, and short walks with the assistance of cane and riding the chair to dining hall. All these permanent medical impairments qualify Petitioner to be "Disabled" under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.; Petitioner is also diagnosed under Ohio statute R.C. 2929.025 (serious mental illness (SMI).). State v. Nawaz Ahmed, 2024-Ohio-904(March 11, 2024).

5. MERIT ARGUMENTS:

5.1. Petitioner Ahmed was appointed to take appeal pro se with the assistance of Counsel of Record Attorney Keith A. Yeazel in case 20-4153. See, case docket and published decisions bearing his name. But he refused to file his appearance. So, Ahmed filed his pro se Jurisdictionally Sound First Appeal case 20-4153 (ECF.Doc.196. filed on June 03,2021 titled, "Amended Notice of Appeal and Motion Seeking Remand due to lack of Finality";.

PRO SE APPEALS ARE ALLOWED IN SIXTH CIRCUIT DESPITE COUNSELS: under *Martinez*, 528 U.S. at 163. See *United States v. Montgomery*, 592 F. App'x 411, 415 (6th Cir. 2014) (citing *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 163, 120 S. Ct. 684, 145 L. Ed. 2d 597 (2000)).And United States v. Jackson, 2024 U.S. App. LEXIS 11452(6th Cir. May 09,2024). United States v. Smallwood, 2024 U.S. App. LEXIS 1673(6th Cir. Jan.24,2024); United States v. Williamson, 2024 U.S. App. LEXIS 1455(6th Cir. Jan. 22,2024); United States v. Kemp, 2023 U.S. App. LEXIS 31470(6th Cir. November 28, 2023); United States v. Wright, 2023 U.S. App. LEXIS 28283(6th Cir.October 24,2023).United States v. Nicolescu, 2024 U.S. App. LEXIS 275(6th Cir. Jan. 04,2024); United States v. Hawkins, 793 Fed. Appx. 416(6th Cr.,February 11,2020);

LIMITED HYBRID REPRESENTATION IS ALSO ALLOWED IN 6th Cir. *See. Miller v. United States*, 561 F. App'x 485, 489 (6th Cir. 2014) (exercising discretion to consider pro se arguments by a defendant with counsel where the issue presented appeared to have merit). United States v. Igboba, 964 F.3d 501(6th Cir.July 02,2020)(([**26] In an exercise of our "broad discretion to determine who practices before [this Court]," upon denying Defendant's motion to proceed *pro se* on appeal, we permitted him to file a *pro se* supplemental brief.).See, *Miller v. United States*, 561 F. App'x 485, 489 (6th Cir. 2014) (quoting *United States v. Dinitz*, 538 F.2d 1214, 1219 (5th Cir. 1976)); *see also United States v. Darwich*, [***15] 574 F. App'x 582, 588 n.6 (6th Cir. 2014).
United States v. Montgomery, 592 Fed. Appx. 411,416(6th Cir. November 24,2014)(The rule against considering *pro se* arguments of a counseled party on appeal is not without exception. Indeed, we have occasionally exercised our discretion to address supplemental *pro se* pleadings in addition to those filed by counsel. *See, e.g., Miller v. United States*, 561 F. App'x 485, 489 (6th Cir. 2014) (exercising discretion to consider defendant's *pro se* arguments despite the fact that he was represented by counsel on appeal where issue presented appeared to have merit). In this case, although we are convinced that Montgomery's additional motions are utterly lacking in merit, we choose to address them because they demonstrate his continuing attempts to commit frauds upon the court.)
Braden v. United States, 817 F.3d 926(6th Cir.,March 10,2016)("while "[a] habeas petitioner has neither a constitutional right nor a statutory right" to represent himself and also be represented by

counsel at the same time, "a court may consider a pro se petition even when a habeas petitioner is represented by counsel." *Miller v. United States*, 561 F. App'x 485, 489 (6th Cir. 2014). It is not uncommon for newly appointed counsel in habeas cases to supplement the original pro se pleading by adding claims. *See Peguero v. United States*, 526 U.S. 23, 25, 119 S. Ct. 961, 143 L. Ed. 2d 18 (1999) (analyzing a case where the district court had "appointed new counsel, who filed an amended motion adding a claim" to a prisoner's pro se 2255 motion).

Here, Mr. Braden initially filed his habeas petition pro se. The district court then appointed counsel to represent him, noting that the newly appointed counsel could file an "amended" petition if necessary. The newly appointed counsel then filed an amended petition asserting additional claims, and noting that the amended petition "does not abrogate any of the claims Mr. Braden raises in his pro se filings. Rather, it supplements claims A through J of Mr. Braden's [**8] pro se motion by adding the claims set forth below."

Because the amended petition was not "complete in itself" and because it referred to and adopted the prior petition, the amended petition did not supersede the original petition. *See Shreve*, 743 F.3d at 131. Mr. Braden unequivocally evinced an intent to supplement his original [***6] petition. *See Clark*, 413 F. App'x at 812. Therefore, the district court erred in treating the original petition as superseded. *See id.*; *see also Shreve*, 743 F.3d at 131.);

United States v. Hawkins, 793 Fed. Appx. 416(6th Cr.,February 11,2020);
United States v. Washpun, 645 Fed. Appx. 511(6th Cir.,May 23,2013)(" Although district courts have discretion to reject pro se filings by litigants represented by counsel, *United States v. Flowers*, 428 F. App'x 526, 530 (6th Cir. 2011), we have suggested that those filings deserve consideration when the arguments they raise could be meritorious, *see, e.g., United States v. Gravley*, 587 F. App'x 899, 916 (6th Cir. 2014) (addressing pro se claims in addition to claims brought by counsel); *Miller v. United States*, 561 F. App'x 485, 489 (6th Cir. 2014) (accepting pro se filing by a litigant with counsel because it "appears to have merit"); *Dillon v. Warden, Ross Corr. Inst.*, 541 F. App'x 599, 609 (6th Cir. 2013) (finding no need to entertain pro se filing that "merely [*515] revisits arguments . . . already made through counsel"); *United States v. Jenkins*, 229 F. App'x 362, 370 (6th Cir. 2005) ("Although we do not ordinarily consider *pro se* claims brought by a defendant represented by counsel on appeal, we have, in an abundance of caution, reviewed them."). We are "left with the definite and firm conviction that the district court committed a clear error of judgment" in rejecting Washpun's letter. *See United States v. Copeland*, 321 F.3d 582, 596 (6th Cir. 2003) (internal quotation marks omitted).)..

5.2. DISTRICT COURT ORDERS LACK FINALITY BECAUSE IT FAILED TO RULE UPON ALL HABEAS CLAIMS IN PETITION (DOC.35) AND JUDICIALBLE under Fed. R. Civ. P. 15(b)(2):

This lack of finality was raised in as detailed in (ECF.Doc.196. filed on June 03,2021 titled, "Amended Notice of Appeal and Motion Seeking Remand due to lack of Finality").

Collins v. Miller, 252 U.S. 364,366(1920):

"The fundamental question whether the judgment appealed from [*366] **is a final one** within the meaning of the rule has suggested itself to the court; and it must be answered although it was not raised by either party. *Defiance Water Co.* v. *Defiance*, 191 U.S. 184, 194. In order to answer the question it is necessary to describe the proceedings before the committing magistrate as well as [***617] those in the District Court on the petition for a writ of *habeas corpus.*"

See, **mentioned habeas claims in** Petition (DOC.35), argued in ROW, in Traverse(Doc.71), Reviewed by R&R (Doc.88), Timely Objected in (DOC.105,174,190) and those claims covered by Fed. R. Civ. P. 15(b)(2)as applied to habeas corpus. See district court published orders:

Ahmed v. Houk, 2021 U.S. Dist. LEXIS 87986, (S.D. Ohio, May 7, 2021)

Ahmed v. Houk, 2020 U.S. Dist. LEXIS 172728, (S.D. Ohio, Sept. 21, 2020)

Ahmed v. Houk, 2014 U.S. Dist. LEXIS 81971 (S.D. Ohio, June 16, 2014)

5.3. FINALITY OF DISTRICT COURT ORDERS IS MANDATORY FOR APPEAL:

See, (Randy Hertz & James S. Liebman, Federal Habeas Corpus Practice and Procedure, 7th Edition, § 35.1. Final orders.," federal statutes and rules governing federal civil appeals.[3] Under those statutes and rules, a **"final"** "order,"[4] "decision,"[5] or "judgment"[6] is generally necessary to give a federal appellate court jurisdiction to hear an appeal.[7]. Another simple case is presented by **orders denying some of the claims in the petition but not ruling on the remaining claims. Even if such a ruling is styled as a denial of a writ of habeas corpus, it is *neither a final judgment nor appealable.***[13] *See, e.g.*, Collins v. Miller, 252 U.S. 364, 365, 370 (1920); Porter v. Zook, 803 F.3d 694, 695, 697, 699 (4th Cir. 2015) (appeal of denial of habeas corpus petition is dismissed because district court failed to resolve claim and accordingly "its decision was not a final order over which we have jurisdiction"☺;

duplicate Notice of Appeal. See McCoy v. Louisiana,584 U.S. 414, at 422 "forgo an appeal" from non-final Orders.

See, Garza v. Idaho, 586 U.S. 232, 241(2019)(citing McCoy v. Louisiana,584 U.S. 414 at 422 and Barnes, at 751 (And in any event, the bare [****13] decision whether to appeal is ultimately the defendant's, *not counsel's, to make*. See (" Notable decisions reserved for the client include "... forgo an appeal."). In other words, filing a notice of appeal is, generally speaking, a simple, non substantive act that is within the defendant's prerogative."

The First Jurisdictionally Sound Appeal case 20-4153 proved that District court has failed to rule upon all habeas claims in Petition(Doc.35) and those judiciable under Fed. R. Civ. P. 15(b)(2) as detailed in (ECF.Doc.196. filed on June 03,2021 titled, "Amended Notice of Appeal and Motion Seeking Remand due to lack of Finality"). Wherefore, petitioner-Appellant did not appeal and could not "appeal the non-final Orders (156,190) of the district court.

6.1. Petitioner has very good reason to not seek COA for appeal but a Remand back to district court to rule upon all available habeas claims, because (a) second habeas Petitions are not allowed and (b) only single habeas appeal is allowed. See McCoy v. Louisiana,584 U.S. 414, at 422 "**forgo an appeal**" from non-final Orders. 28 U.S.C. § 2253(c)(1)(A) require "final Order" to apply for COA and Court to decide COA. Gonzalez v. Thaler, 565 U.S. 134,137 (2012).See Ahmed v. Houk, 2021 U.S. Dist. LEXIS 87986, (S.D. Ohio, May 7, 2021); Ahmed v. Houk, 2020 U.S. Dist. LEXIS 172728, (S.D. Ohio, Sept. 21, 2020)and Ahmed v. Houk, 2014 U.S. Dist. LEXIS 81971 (S.D. Ohio, June 16, 2014).

7. WRONGLY DENYING PETITIONER MOTION TO DISMISS Unauthorized appeal case 21-3542:

The *unopposed* Fed. R. App. P. 42(b)(2) Motion To Dismiss Case 21-3542, means "agreement of parties". See, US Bank Trust N.A. v. Thomas, 2024 U.S. App. LEXIS 11343(1st Cir.April 24,2024) stated: "Upon consideration of appellant's unopposed motion, it is hereby ordered that this appeal be voluntarily dismissed pursuant to Fed. R. App. P. 42(b)(2)."

To the contrary, the Sixth Circuit, Court of Appeals Panel erroneously made the Duplicate, unauthorizedly filed by counsels, Appeal case 21-3542 as only appeal case, disallowing Appellant's **unopposed** Fed. R. App. P. 42(b)(2) Motion To Dismiss Case 21-3542. The Appeal Panel violating Appellant Ahmed's "ultimate decision" to "Not to take an appeal" from the non-final judgment(Ecf.156,190) but seek a Remand to district court to rule upon all available habeas claims, cannot be overruled by counsels' by "professionally unreasonable choices" and without consent of Appellant or by the court of appeals. See, Garza v. Idaho, 586 U.S. 232, 241(2019)(citing McCoy v. Louisiana,584 U.S. 414 at 422 and Barnes, at 751.

CONCLUSION

5. Petitioner state that his 90 days to file the Petition for Certiorari and Petition for extra Ordinary Writ began on April 17,2024. Petitioner request that he be granted additional 60 days beyond the 90 days allowed from April 17,2024 to file Petition for Certiorari Review and Petition for Extra Ordinary Writ.

Respectfully Submitted

(NAWAZ AHMED)
A404-511, RCI, Pro se Petitioner,
P.O.Box7010
Chillicothe, OH 45601-7010
Dated: June 26 ,2024.

Nos. 20-4153/21-3542/22-3039

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 17, 2024
KELLY L. STEPHENS, Clerk

NAWAZ AHMED,

Petitioner-Appellant,

v.

TIM SHOOP, WARDEN,

Respondent-Appellee.

ORDER

BEFORE: SILER, WHITE, and LARSEN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the cases. The petition then was circulated to the full court.* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

*Judge Murphy recused himself from participation in this ruling.

Nos. 20-4153/21-3542/22-3309

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NAWAZ AHMED,

Petitioner-Appellant,

v.

TIM SHOOP, Warden,

Respondent-Appellee.

ORDER

Before: SILER, WHITE, and LARSEN, Circuit Judges.

Nawaz Ahmed, an Ohio death-row inmate, has filed multiple pro se motions across three different appeals from the district-court case in which that court denied his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. Ahmed's appointed counsels have filed a motion to proceed in forma pauperis (IFP) in No. 21-3542. Ahmed is serving a death sentence for the 1999 murders of his estranged wife and her sister, father, and two-year-old niece. *See State v Ahmed*, 813 N.E.2d 637, 667 (Ohio 2004).

Procedural History

On September 21, 2020, the district court denied Ahmed's § 2254 petition. Although represented by appointed attorneys, Ahmed filed a timely pro se notice of appeal on October 16, 2020, which was received by this court on October 26 and docketed as Case No. 20-4153.

In the meantime, Ahmed's counsels filed a timely Federal Rule of Civil Procedure 59(e) motion to alter or amend the judgment on October 18, 2020. The district court denied that motion on May 7, 2021. On June 4, 2021, counsels filed a timely notice of appeal, which was docketed as Case No. 21-3542. Cases Nos. 20-4153 and 21-3542 have been consolidated.

On September 7, 2021, the district court denied Ahmed's pro se motion to strike the notice of appeal filed by counsels. Three months later, Ahmed moved for leave to reopen the time for

appealing that denial. The district court denied that motion on January 6, 2022. Ahmed's timely pro se notice of appeal from that denial was docketed in this court as Case No. 22-3039.

On November 14, 2022, the jurisdictional panel in No. 22-3039 (Boggs, Bush, and Larsen, JJ.) dismissed the appeal insofar as Ahmed was seeking to appeal the district court's order dated September 7, 2021. Ahmed's petition for rehearing en banc was denied on February 3, 2023. The United States Supreme Court denied Ahmed's petition for certiorari on October 3, 2023. Ahmed's appeal from the district court's January 6, 2022 order remains pending in No. 22-3039. We now consolidate No. 22-3039 with Nos. 20-4153 and 21-3542.

Pending Motions

On July 6, 2021, in Nos. 20-4153 and 21-3542, after counsel filed the appeal from the denial of Ahmed's Rule 59(e) motion, Ahmed filed a pro se motion to dismiss No. 21-3542 as duplicative. He asserted that his appointed attorneys were conspiring with the case manager in this court, Patricia Elder, to not honor the district court's order granting IFP back in 2007, which allegedly compelled him to pay the $505 filing fee in No. 20-4153.

On August 20, 2021, Ahmed filed a similar pro se motion in No. 21-3542 only. That motion also requested that the court substitute an "ethical case manager" for case manager Elder and to substitute counsels. Besides accusing counsels of a variety of failings and professional and personal misconduct, Ahmed expressed concern that counsels' failing to appeal from the underlying judgment—and instead filing the "illegal" and "duplicate" appeal from the denial of the Rule 59(e) motion—had forced him to file a pro se notice of appeal and to pay the $505 fee. He thus urges the court to "fine" each of his attorneys $505. And he faulted Elder for collaborating with them in docketing No. 21-3542 and accuses her of anti-Muslim bias.

On December 14, 2022, Ahmed filed a pro se motion to appoint appellate counsel and to have his current attorneys withdraw in Nos. 20-4153 and 22-3039.

Finally, Ahmed's attorneys filed a motion for Ahmed to proceed IFP in No. 21-3542, and Ahmed has filed an IFP motion in No. 22-3039.

Attorneys' Response

In their omnibus response to Ahmed's various pro se motions in the three cases, Ahmed's attorneys argue that his pro se motions should be denied. They state that he suffers from a "delusional disorder" and mental illness and that he needs counsel. They assert that, despite Ahmed's differences with them, they are willing and able to continue representing him. They also argue that No. 21-3542, the appeal in which they are representing Ahmed, should go forward.

Discussion

I. Ahmed's Motions to Dismiss Duplicate Appeal, for Substitution (and Fining) of Counsel, and to Remove Case Manager

A. Duplicate Appeal

As Ahmed's attorneys observe, one of Ahmed's primary concerns with their filing of No. 21-3542 is that the $505 filing fee that he paid in No. 20-4153 is being unjustly applied to the counseled appeal. As they point out, that is a misconception on Ahmed's part; Ahmed's fee remains due in No. 21-3542, and his IFP motion is pending in that case.

The threshold question is whether Ahmed should be permitted to proceed with his appeal in No. 20-4153 in the first place. Ahmed has been represented by counsel throughout this § 2254 case, and even though he filed No. 20-4153 pro se, he requests the representation of counsel for that appeal. But a federal criminal defendant does not have the right to "hybrid" representation whereby he would be able to file pro se motions while represented by appointed counsel. *See United States v. Fontana*, 869 F.3d 464, 472-73 (6th Cir. 2017); *United States v. Williams*, 641 F.3d 758, 770 (6th Cir. 2011). Similarly, "[a] habeas petitioner has neither a constitutional right nor a statutory right to hybrid representation." *Miller v. United States*, 561 F. App'x 485, 488-89 (6th Cir. 2014); *see also Stinson v. United States*, No. 21-5535, 2022 WL 1314397, at *1 (6th Cir. Feb. 8, 2022) (upholding the district court disregarding a federal prisoner's pro se filings in proceeding under 28 U.S.C. § 2255 "because [he] was represented by retained counsel at the time and did not have a constitutional or statutory right to hybrid representation").

Here, Ahmed's appointed attorneys thought it better to file a Rule 59(e) motion than to appeal directly from the underlying judgment, as Ahmed did with his pro se appeal in No. 20-

4153. And their appeal from the denial of Rule 59(e) relief brings up the underlying judgment for appeal. *See GenCorp., Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 832-33 (6th Cir. 1999); *see also Banister v. Davis*, 140 S. Ct. 1698, 1703 (2020). Rather than extending the appointment of counsel to No. 20-4153, as Ahmed requests, it makes more sense to dismiss *that* appeal as duplicative. Accordingly, No. 20-4153 is dismissed, and No. 21-3542 is the operative appeal going forward.

B. Request to Fine Attorneys

We deny Ahmed's request in his motion in No. 21-3542 that the court "fine" his attorneys over the $505 filing fee he paid in No. 20-4153 because that request is based on a factual premise that is contradicted by the record: Contrary to Ahmed's assertion, his attorneys did not force him to file the appeal in No. 20-4153 or to pay the fee in that case, nor did they file an "illegal" appeal in No. 21-3542.

C. Request to Replace Case Manager

We deny Ahmed's request that Elder be replaced as case manager. Elder did not improperly docket No. 21-3542, and Ahmed's allegations that she collaborated with his attorneys regarding that case or engaged in anti-Muslim bias are speculative and conclusory.

D. Motions for Substitution of Counsel

Indigent petitioners in capital cases are entitled to appointed counsel, *Martel v. Clair*, 565 U.S. 648, 652 (2012) (citing 18 U.S.C. § 3599), but not to counsel of their choice, *Christeson v. Roper*, 574 U.S. 373, 377 (2015) (per curiam); *see Jones v. Bradshaw*, 46 F.4th 459, 471 (6th Cir. 2022). Nonetheless, "a court may 'replace' appointed counsel with 'similarly qualified counsel . . . upon motion' of the petitioner." *Christeson*, 574 U.S. at 377 (alteration in original) (quoting 18 U.S.C. § 3599(e)). "[A] motion for substitution should be granted when it is in the 'interests of justice.'" *Id.* (quoting *Clair*, 565 U.S. at 663). The "interests of justice" standard turns on several factors, including, but not limited to: "the timeliness of the motion; the adequacy of the district court's inquiry into the defendant's complaint [in the context of reviewing the district court's denial of substitution of counsel]; and the asserted cause for that complaint, including the

extent of the conflict or breakdown in communication between lawyer and client (and the client's own responsibility, if any, for that conflict)." *Clair*, 565 U.S. at 663.

In the constitutional context, the Sixth Amendment does not guarantee a meaningful relationship between counsel and his client. *See Morris v. Slappy*, 461 U.S. 1, 13-14 (1983). Generally, disagreements concerning a petitioner's strategy and unwillingness to communicate with counsel do not warrant substitution of counsel, at least where the attorney-client relationship has not devolved into a complete breakdown. *See United States v. Marrero*, 651 F.3d 453, 466-67 (6th Cir. 2011). Further, the appointment of substitute counsels would unnecessarily prolong this case given the complexity of the issues that have been litigated for more than fifteen years in federal court. And attorney Yeazel has been litigating Ahmed's federal petition for all of that time. Yeazel's familiarity with the issues suggests that he should continue representing Ahmed on appeal in No. 21-3542, at least for now. Accordingly, we deny Ahmed's motion for substitution of counsels in No. 21-3542. Ahmed's motion for substitution in No. 20-4153 is denied as moot. To the extent that Ahmed moves for substitution of counsel in No. 22-3039, that motion is denied as unnecessary because Ahmed is not represented by counsel in that appeal.

II. Motions to Proceed In Forma Pauperis

A. No. 21-3542

As we have decided that Ahmed will proceed with his current appointed attorneys, at least for now, in No. 21-3542, the next step in that appeal would be for attorneys to prepare an application for a certificate of appealability (COA). The IFP motion in No. 21-3542 will be held in abeyance and considered along with a COA application to be filed as indicated below.

B. No. 22-3039

As noted above, Ahmed's pro se appeal in No. 22-3039 concerns only the January 6, 2022 denial of his motion to reopen the time for appealing the September 7, 2021 denial of his motion to strike the notice of appeal (again, No. 21-3542) filed by his attorneys.

Initially, we note that Ahmed does not need a COA to appeal that ruling because it is not a "final order" in that it did not "dispose of the merits of a habeas corpus proceeding." *Pouncy v. Palmer*, 993 F.3d 461, 464-65 (6th Cir. 2021) (quoting *Harbison v. Bell*, 556 U.S. 180, 183

(2009)); *see Pennebaker v. Rewerts*, No. 21-1216, 2021 WL 7237920, at *3 (6th Cir. Sept. 10, 2021) (concluding that "a COA [wa]s not required for [the petitioner] to challenge the district court's denial of his motions to reopen and/or extend the time to file an appeal").

Under Federal Rule of Appellate Procedure 24(a)(5), an appellant may seek leave to proceed IFP in this court. *See Owens v. Keeling*, 461 F.3d 763, 774-75 (6th Cir. 2006). This court may grant the IFP motion if it determines that an appeal would be taken in good faith and that the appellant is indigent. *Id.* at 776. But granting IFP status is not warranted if the appeal is frivolous—i.e., it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also Coppedge v. United States*, 369 U.S. 438, 445 (1962).

Ahmed failed to file a notice of appeal within thirty days of the district court's September 7, 2021 denial of his motion to strike counsels' notice of appeal in No. 21-3542. *See* 28 U.S.C. § 2107(a); *Winters v. Taskila*, 88 F.4th 665, 668-69 (6th Cir. 2023). And he failed to seek an extension of the time to file a notice of appeal within thirty days after the time to appeal. *See Winters*, 88 F.4th at 669; Fed. R. App. P. 4(a)(5).

Nonetheless,

> a district court "may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if . . . (A) the court finds that the moving party did not receive notice" within 21 days of the entry of judgment, "(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice . . . , whichever is earlier; and (C) the court finds that no party would be prejudiced."

Winters, 88 F.4th at 669 (alterations in original) (quoting Fed. R. App. P. 4(a)(6)). Ahmed purportedly submitted his Rule 4(a)(6) motion for mailing on December 8, 2021, approximately two months after the thirty-day appeal period expired. The magistrate judge recommended that Ahmed's Rule 4(a)(6) motion be denied because Ahmed received notice through his appointed counsel within twenty-one days of the entry of the September 7, 2021 order. Although the magistrate judge warned Ahmed about the consequences of failing to file objections within fourteen days, Ahmed filed none. Based on Ahmed's failure to object, the district court adopted the magistrate judge's recommendation and denied his motion to reopen the time to appeal.

Ordinarily, we review for an abuse of discretion the denial of a Rule 4(a)(6) motion for reopening the time to file an appeal. *Kuhn v. Sulzer Orthopedics, Inc.*, 498 F.3d 365, 368 (6th Cir. 2007). But a party forfeits his right to review of an issue if he fails to object to a magistrate judge's report and recommendation within fourteen days of the filing of the report, provided that the report informed the parties of the consequences of failing to object. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *see also Thomas v. Arn*, 474 U.S. 140, 155 (1985). Here, the magistrate judge's report included the requisite notice, and Ahmed failed to object. And although the forfeiture rule is non-jurisdictional and this court may excuse a forfeiture "in the interests of justice," *Thomas*, 474 U.S. at 155, the interests of justice do not warrant excusing the forfeiture here insofar as there is no reason to think that the district court abused its discretion in denying Ahmed's motion to reopen, *see Carter v. Mitchell*, 829 F.3d 455, 472 (6th Cir. 2016) (noting "a few limited circumstances" where this court has been willing to excuse the forfeiture of an issue).

For these reasons, we deny Ahmed leave to proceed IFP in No. 22-3039.

CONCLUSION

Ahmed's motions to dismiss No. 21-3542 as duplicative (No. 20-4153, D. 18; No. 21-3542, D. 10) are **DENIED**. Instead, No. 20-4153 is hereby **DISMISSED** as duplicative, and the filing fee shall be returned by the Clerk. His requests to fine his attorneys, for substitution of counsel, and to replace the case manager (No. 20-4153, D. 22; No. 21-3542, D. 10; No. 22-3039, D. 10) are also **DENIED**. Ahmed thus will proceed with appointed counsels in No. 21-3542. His motion to proceed IFP in No. 21-3542 (No. 21-3542, D. 8) will be held in abeyance and decided along with a COA application to be filed at a future date. Ahmed's motion to proceed IFP in No. 22-3039 (No. 22-3039, D. 5) is **DENIED**. Unless Ahmed pays the $505 appellate filing fee to the district court within thirty days of the entry of this order, No. 22-3039 will be dismissed for want of prosecution.

Within thirty days of the date of this order, Ahmed's attorneys are **DIRECTED** to file notice of their intent regarding the filing of a COA application on Ahmed's behalf.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

No. 20-4153

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 05, 2021
DEBORAH S. HUNT, Clerk

NAWAZ AHMED,

Petitioner-Appellant,

v.

TIM SHOOP, WARDEN,

Respondent-Appellee.

ORDER

The court having received a petition for initial hearing en banc, and the petition having been circulated to all active judges of this court,* and no judge of this court having favored the suggestion,

It is **ORDERED** that the petition be and hereby is denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

*Judge Murphy recused himself from participation in this ruling.

Case No:----------

IN THE

SUPREME COURT OF THE UNITED STATES

NAWAZ AHMED – PETITIONER

Vs.

TIM SHOOP, WARDEN, RESPONDENT

PROOF OF SERVICE AND 28 U. S. C. § 1746 DECLARATION:

I, pro se Petitioner Nawaz Ahmed, A404-511, currently on Ohio deathorw, Declare under penalty of perjury per 28 U. S. C. § 1746 that the following is true and correct. I have two addressed-sealed legal mail envelopes containing (a) Sup. Ct. Rule 13.5 Application To Extend the time To File Petition For Certiorari and Petition For extraordinary Writ (b) Proof of Service, supported by 28 U. S. C. § 1746 Declaration for mailing to the

(i) Clerk of the Supreme Court, Washington, DC 20543 via regular mail, and

(ii) Warden's counsel Hon. Charles L. Willie, Office of the Ohio Attorney General, 30 E. Broad Street, ***23rd floor***. Columbus, OH 43215. Via regular mail.

I have handed over both envelops, with postage being preauthorized/prepaid, to the RCI Mail Staff. for mailing out via USPS on June 26 ,2024.

Executed on June 26,2024.

(Nawaz Ahmed),

A404511,Prisoner, **Pro Se, Petitioner**,

Ross Correctional Institute, P.O.Box 7010,

P.O.Box 7010,Chillicothe, OHIO 45601-7010.

RCI Telephone: ~~470~~ 740-774-7050