

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

IN RE TROY ANTHONY DAVIS

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Civil Case No. 4:09-CV-130 (WTM)

**NOTICE OF APPEAL TO THE COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT**

Notice is hereby given that Troy Anthony Davis, the above-named Petitioner, hereby appeals to the United States Court of Appeals for the Eleventh Circuit from the final judgment and Order entered in this matter by the United States District Court for the Southern District of Georgia, Savannah Division, denying his Petition for Writ of Habeas Corpus by judgment entered on August 24, 2010.

Mr. Davis files this Notice because a direct appeal to the Supreme Court of the United States does not appear to be explicitly authorized by Supreme Court Rule, federal statute or Supreme Court precedent. Supreme Court Rule 18 and 28 U.S.C. § 2101 provide for an appeal from the decision of a district court only as “authorized by law.” See Sup. Ct. R. 18 (“When a direct appeal from a decision of a United States district court is authorized by law The notice of appeal shall specify . . . statute or statutes under which the appeal is taken.”); 28 U.S.C. § 2101(b) (“Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding”).

A direct appeal to the Supreme Court of an order entered in a habeas corpus proceeding is not explicitly “authorized by law.” The statute governing appeals from habeas corpus proceedings authorizes appeals only to the court of appeals. 28 U.S.C. § 2253 (“In a habeas corpus proceeding . . . the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.”). Furthermore, the Supreme Court has concluded that it will not exercise original jurisdiction to issue writs of habeas corpus, when—as in this case—a court of appeals has jurisdiction to review the district court’s final judgment. Dixon v. Thompson, 429 U.S. 1080, 1081 (1977) (refusing to hear an original habeas petition since “an appeal from the District Court may still be had” in the court of appeals); see also Ex parte Abernathy, 320 U.S. 219 (1943) (the Court does not exercise its original habeas jurisdiction “where an adequate remedy may be had in a lower federal court”).

It is clear that the United States Court of Appeals for the Eleventh Circuit has jurisdiction to resolve Mr. Davis’s claims. By statute, the Court of Appeals hears appeals from “*all* final decisions” of this Court. 28 U.S.C. § 1291 (emphasis added). Moreover, the statute that governs appeals from habeas corpus proceedings, 28 U.S.C. § 2253, likewise instructs that a district court’s “final order *shall* be the subject of review, on appeal, by the court of appeals for the circuit in which the proceeding is held” (emphasis added).

Because the court of appeals has jurisdiction to hear his immediate appeal, and because direct review by the Supreme Court is not explicitly “authorized by law,” an appeal to the Court of Appeals for the Eleventh Circuit pursuant to a Certificate of

Appealability is proper. Because the appeal procedures in this case are unprecedented and this Court indicated that it believed a direct appeal to the Supreme Court may be appropriate, Mr. Davis has filed a notice of appeal, in the alternative, to Supreme Court of the United States in order to effect timely notice of such an appeal pursuant to Federal Rule of Appellate Procedure 4(a) and the Rule 11(b) of the Rules Governing Section 2254 Cases In the United States District Court.

Respectfully Submitted,

/s/ Jason Ewart

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CERTIFICATE OF SERVICE

I do hereby certify that I have this day electronically filed this *Notice of Appeal* with the Clerk of the Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following list attorneys of record:

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This the 23th Day of September, 2010.

/s/ Jason Ewart
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