

FILED

August 17, 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 03-60547
Conference Calendar

MICHAEL MUSCOLINO,

Petitioner-Appellee,

versus

DAVID TURNER; JIM HOOD,

Respondents-Appellants.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 4:02-CV-434

Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:*

The State appeals the district court's interlocutory order holding the 28 U.S.C. § 2254 petition filed by Michael Muscolino, Mississippi prisoner #K2799, in abeyance pending his exhaustion of an unexhausted claim. The State argues that the district court's order is improper because, in effect, it allows Muscolino's 28 U.S.C. § 2254 petition to toll the Antiterrorism and Effective Death Penalty Act's limitations period. The State asks this court to reverse the district court's order.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

After the State filed its interlocutory appeal, the district court found that all of Muscolino's claims had been exhausted. As the district court's order holding the case in abeyance is no longer in effect, we DISMISS this appeal as MOOT. See City of Erie v. Pap's A.M., 529 U.S. 277, 287 (2000); United States Parole Comm'n v. Geraghty, 445 U.S. 388, 395-96 (1980). Given our dismissal of this appeal, the district court is directed to administratively reopen the case.

APPEAL DISMISSED.