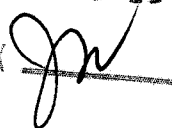


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED
2010 FEB -2 PM 3:25
DEPUTY CLERK 

HENRY WATKINS SKINNER,

Plaintiff,

v.

LYNN SWITZER,
District Attorney,
31st Judicial District of Texas,

Defendant.

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2:09-CV-0281

**ORDER DISMISSING PLAINTIFF'S
MOTION FOR STAY OF EXECUTION**

Came for consideration Plaintiff Henry Watkins Skinner's Motion for Stay of Execution, filed February 1, 2010. The motion is DISMISSED for want of jurisdiction.

Plaintiff Skinner is scheduled to be executed on February 24, 2010 pursuant to his conviction in the 31st District Court of Gray County, Texas, of the offense of capital murder. In the above-numbered case, plaintiff sought relief under the Federal Civil Rights Act (42 U.S.C. § 1983). Plaintiff sought to compel defendant Switzer to make available for DNA testing certain evidence in her possession, which was obtained during the initial investigation of the underlying criminal case. Relying on *Kutzner v. Montgomery County*, 303 F.3d 336 (5th Cir. 2002), this Court dismissed plaintiff's § 1983 complaint on January 20, 2010. Plaintiff appealed to the United States Court of Appeals for the Fifth Circuit, which court, citing *Kutzner*, 303 F.3d at 339 and *Richards v. District Attorney's Office*, No. 09-10144, 2009 WL 4716025 (5th Cir. December 10, 2009), affirmed the District Court's Judgment. The Fifth Circuit issued its Opinion and Mandate on January 28, 2010. Plaintiff Skinner did not seek a stay of execution from this Court while his case was pending before this Court and did not seek a stay of

execution from the Fifth Circuit while his appeal was pending before that court. Plaintiff now seeks a stay of execution.

JURISDICTION

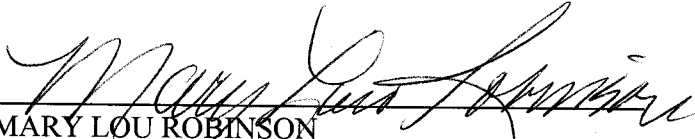
There is currently no case or controversy pending before the District Court, and plaintiff has not directed the Court to the basis upon which he contends this Court has jurisdiction to enter a stay. Instead, plaintiff references Rule 23 of the Rules of the Supreme Court of the United States and argues he must first seek relief in the lower courts before presenting a claim to the Supreme Court. Plaintiff also cites the All Writs Act. *See* 28 U.S.C. § 1651. Neither the All Writs Act nor Supreme Court Rule 23 confers jurisdiction on this Court. *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 33, 123 S.Ct. 366, 370, 154 L.Ed.2d 368 (2002) (“the All Writs Act does not confer jurisdiction on the federal courts”); *Bolin v. Sears, Roebuck & Co.*, 231 F.3d 970, 973 (5th Cir. 2000) (“only Congress may confer jurisdiction on the lower federal courts”).

“The power to issue a stay of execution comes from [28 U.S.C.] § 2251, and the question is whether there is a pending or potential habeas corpus proceeding before the court.” *Rosales v. Quarterman*, 565 F.3d 308, 311 (5th Cir. 2009). A district court has no power under § 2251 to stay execution when there is no pending habeas corpus proceeding. *Id.*; *Williams v. Cain*, 143 F.3d 949, 950 (5th Cir. 1998). In this case not only is there no pending habeas corpus proceeding, there is no pending § 1983 proceeding.

Accordingly, plaintiff’s motion is DISMISSED for lack of jurisdiction.

IT IS SO ORDERED.

ENTERED this 2nd day of February, 2010.


MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE