

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANTHONY THOMAS,	:	CIVIL ACTION
	:	
Petitioner,	:	
	:	NO. 04-1441
v.	:	
	:	
	:	
THEODORE NORDMARK, et al.,	:	
Respondents.	:	

MEMORANDUM

BUCKWALTER, S.J.

January 19, 2005

The history of this case is set forth in this court’s opinion of May 12, 2004. In that opinion, the court stated:

...the court feels that presently, Petitioner is entitled to relief pending the disposition of his collateral attack of his state conviction.

The nature of that relief will be the subject of a court HEARING on Wednesday, May 26, 2004 at 4:00 P.M. in Courtroom 14A.

That hearing was not held, but instead the government represents in its supplemental response (Docket No. 8) as follows:

After the Court issued its memorandum and order, the parties entered into negotiations related to Thomas’ detention pending the outcome of the collateral attack on his state court conviction. Thomas alleged that the Department of Homeland Security (“DHS”) must release him from detention because he was not receiving adequate medical attention. The DHS investigated Thomas’ allegations and determined that he was receiving appropriate medical care. Indeed, Thomas was released from detention and underwent a surgical procedure to correct an orthopedic condition in August 2004. The DHS stands ready to effect Thomas’ removal if the Court vacates the order enjoining Thomas’ removal to Great Britain.

In the same supplemental brief, the government represents that:

On August 26, 2004, Judge Carolyn Temin of the Philadelphia Court of Common Pleas, denied Thomas' Petition for Post-Conviction Relief. Counsel for the Petitioner informed the United States of the outcome of Thomas' state court proceedings on November 12, 2004. At that time, counsel also provided the Government with documents indicating that Thomas is proceeding with a *pro se* appeal of Judge Temin's denial of the collateral attack on his state court conviction.

Because Petitioner's collateral attack was unsuccessful, the government is requesting that the court deny the relief and vacate its order enjoining his removal. The government's motion will be granted. The mere fact that Petitioner is proceeding with a *pro se* appeal of Judge Temin's order is not sufficient. The time for filing a direct appeal as of right from Petitioner's conviction has long expired.

While this court initially ruled that a stay was proper while Petitioner pursued his collateral attack, upon further consideration, I find that ruling to be incorrect. A criminal conviction is final for immigration law purposes when the alien has been convicted by a court of competent jurisdiction and exhausted the direct appeals to which he was entitled, or as in this case, the time to file such a direct appeal has expired. Grageda v. U.S. I.N.S., 12 F.3d 919, 921 (9th Cir. 1993).

An order follows.

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ORDER

AND NOW, this 19th day of January, 2005, upon consideration of the government's supplemental response to the petition for habeas corpus relief, it is hereby ORDERED that the petition for habeas corpus relief is DENIED.

IT IS FURTHER ORDERED that the order enjoining the United States from removing Anthony Thomas is VACATED.

This case is CLOSED.

BY THE COURT:

RONALD L. BUCKWALTER, S.J.