

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-30817
Summary Calendar



A True Copy
Certified order issued Oct 12, 2018

Lyfe W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

FREDDIE KING, JR.,

Petitioner-Appellant

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent-Appellee

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:97-CV-388

Before SMITH, HIGGINSON, and DUNCAN, Circuit Judges.

PER CURIAM:*

Freddie King, Jr., Louisiana prisoner # 294107, was convicted of four counts of second degree murder and sentenced to four life terms of imprisonment. He seeks leave to proceed in forma pauperis (IFP) on appeal from the district court's order construing his Federal Rule of Civil Procedure 60(b) motion challenging the district court's denial of his 28 U.S.C. § 2254 application as an unauthorized successive § 2254 application and transferring

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

his application to this court. King's motion to file a supplemental brief is DENIED.

By moving to proceed IFP on appeal, King is challenging the district court's certification that his appeal was not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir.1997). Our inquiry into King's good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citations omitted).

King contends that the district court erred when it construed his Rule 60(b) motion as an unauthorized successive § 2254 application. He argues that his challenge to the district court's failure to consider his claim of ineffective assistance of counsel during opening arguments was the proper subject of a Rule 60(b) motion because it alleged a defect in the integrity of his first § 2254 proceeding. King also asserts that his claim based on *Coleman v. Goodwin*, 833 F.3d 537, 543-44 (5th Cir. 2016), showed extraordinary circumstances warranting relief under Rule 60(b)(6) and that any references to his previously raised ineffective assistance of counsel claims were made only in support of his argument.

Our examination of King's filings, the record, and pertinent authority shows no error in connection with the district court's conclusion that King's Rule 60(b) motion was best construed as an unauthorized successive § 2254 application because it included a new challenge to King's convictions and attacked the district court's merits-based resolution of his previously litigated § 2254 claims. *See Gonzalez v. Crosby*, 545 U.S. 524, 530, 532 & n.4 (2005). King has not shown that an appeal of the transfer order involves legal points that are arguable on their merits. *See Howard*, 707 F.2d at 220. Accordingly, King's motion to proceed IFP on appeal is DENIED. Because the merits of his

appeal “are so intertwined with the certification decision as to constitute the same issue,” the appeal is DISMISSED AS FRIVOLOUS. *See Baugh*, 117 F.3d at 202 & n.24; 5TH CIR R. 42.2. King is WARNED that future frivolous, repetitive, or otherwise abusive filings will invite the imposition of additional sanctions, which may include dismissal, monetary sanctions, and restrictions on his ability to file pleadings in this court and any court subject to this court’s jurisdiction.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FREDDIE KING, JR. (#294107)

CIVIL ACTION

VERSUS

DARRELL VANNOY, WARDEN

NO. 97-388-SDD-EWD

ORDER

This matter comes before the Court on Petitioner's *Notice of Intent to Appeal*,¹ which the Court interprets to be an application for a Certificate of Appealability, and Petitioner's *Motions to Proceed In Forma Pauperis on Appeal*.²

Pursuant to *Ruling* dated September 27, 2017,³ this Court referred Petitioner's Application for Rule 60(b)(6) Relief to the United States Court of Appeals for the Fifth Circuit in order for that Court to determine whether to grant Petitioner authorization to proceed with his successive application for *habeas corpus* relief brought pursuant to 28 U.S.C. § 2254. Petitioner now seeks to pursue an Appeal from that *Ruling*. However, pursuant to 28 U.S.C. § 2253(c)(1)(A), an appeal may not be taken from a final *Order* in a *habeas corpus* proceeding in which the detention complained of arises out of process issued by a state court unless a federal court grants the Petitioner a Certificate of Appealability. Further, pursuant to 28 U.S.C. § 2253(c)(2), a Certificate of Appealability may not be issued unless the applicant has made a substantial showing of the denial of a constitutional right.

¹ Rec. Doc. 25.

² Rec. Docs. 26 and 27.

³ Rec. Doc. 23.

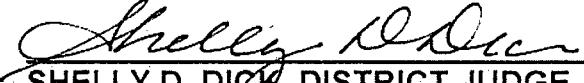
Having considered the record in this case and the requirements of 28 U.S.C. § 2253 and Rule 22(b) of the Federal Rules of Appellate Procedure, the Court finds that a substantial showing of the denial of a constitutional right has not been made.⁴ Accordingly, Petitioner is not entitled to a Certificate of Appealability in this case for the reasons set forth in the Court's *Ruling* dated September 27, 2017.⁵

Further, inasmuch as the Court hereby denies Petitioner a Certificate of Appealability, and inasmuch as Petitioner is therefore not allowed to pursue an appeal in this case, his Motions to Proceed *In Forma Pauperis* on Appeal⁶ shall also be denied. Accordingly,

IT IS HEREBY ORDERED that Petitioner's *Notice of Intent to Appeal*,⁷ which the Court interprets to be an application for a Certificate of Appealability, is **DENIED**.

IT IS FURTHER ORDERED that Petitioner's Motions to Proceed *In Forma Pauperis* on Appeal⁸ are hereby **DENIED**.

Baton Rouge, Louisiana the 29 day of November, 2017.



SHELLY D. DICK, DISTRICT JUDGE
MIDDLE DISTRICT OF LOUISIANA

⁴ In fact, the record reflects that the Fifth Circuit has denied Petitioner authorization to proceed with his successive habeas application. See Rec. Doc. 29.

⁵ Rec. Doc. 23.

⁶ Rec. Docs. 26 and 27.

⁷ Rec. Doc. 25.

⁸ Rec. Docs. 26 and 27.

**Additional material
from this filing is
available in the
Clerk's Office.**