

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-60792



VICTOR DEWAYNE JONES,

Petitioner - Appellant

v.

JOE ERRINGTON,

Respondent - Appellee

A True Copy
Certified order issued Dec 05, 2019

Tyler W. Cawley

Clerk, U.S. Court of Appeals, Fifth Circuit

Appeal from the United States District Court
for the Southern District of Mississippi

Before SMITH, DENNIS, and DUNCAN, Circuit Judges.

PER CURIAM:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). In this habeas corpus case filed by a prisoner in state custody, the petitioner is attempting to appeal from a certified copy, which the district court placed on the docket as Item No. 5, of this court's Per Curiam order denying authorization to file a successive 28 U.S.C. § 2254 application.

"Federal appellate courts have jurisdiction over appeals only from (1) a final decision under 28 U.S.C. § 1291; (2) a decision that is deemed final due to jurisprudential exception or that has been properly certified as final pursuant to Fed. R. Civ. P. 54(b); and (3) interlocutory orders that fall into specific

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classes, 28 U.S.C. § 1292(a), or that have been properly certified for appeal by the district court, 28 U.S.C. § 1292(b)." *Askanase v. Livingwell, Inc.*, 981 F.2d 807, 809-10 (5th Cir. 1993). A copy of this court's Per Curiam order that the district court placed on the docket is not a final or otherwise appealable order. Accordingly, the appeal is DISMISSED for want of jurisdiction.

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FOR THE FIFTH CIRCUIT

No. 19-60792

VICTOR DEWAYNE JONES,

Petitioner - Appellant

v.

JOE ERRINGTON,

Respondent - Appellee

Appeal from the United States District Court for the
Southern District of Mississippi

Before SMITH, DENNIS, and DUNCAN, Circuit Judges.

PER CURIAM:

IT IS ORDERED that appellant's motion for leave to file out of time the motion for reconsideration is GRANTED.

This panel previously dismissed the appeal for want of jurisdiction. The panel has considered appellant's motion for reconsideration.

IT IS FURTHER ORDERED that the motion is DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-60605



A True Copy
Certified order issued Sep 27, 2019

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

In re: VICTOR DEWAYNE JONES,

Movant

Motion for an order authorizing
the United States District Court for the
Southern District of Mississippi to consider
a successive 28 U.S.C. § 2254 application

Before ELROD, COSTA, and ENGELHARDT, Circuit Judges.

PER CURIAM:

Victor Dewayne Jones, Mississippi prisoner # 81756, moves for authorization from this court to file a successive 28 U.S.C. § 2254 application challenging his 2004 guilty plea convictions for two counts of sexual battery. He seeks to argue that: (1) the trial court erred in concluding that it lacked jurisdiction to consider his motion for state postconviction relief; (2) trial counsel was ineffective in failing to investigate his history of mental illness, failing to request a mental health evaluation and competency hearing, and instructing him to perjure himself during the plea colloquy when asked whether he was under the influence of any drugs and whether any promises were made in exchange for his plea; (3) he was not competent to enter a guilty plea and the trial court erred by failing to sua sponte order a mental health evaluation and conduct a competency hearing prior to accepting his guilty plea; and (4) his guilty plea was not knowing and voluntary due to his mental

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incompetence and because he pleaded guilty under the false pretense that the trial court always accepted the State's sentence recommendation.

Although Jones contends that the trial court erred in concluding that it lacked jurisdiction to consider his motion for state postconviction relief, that claim is not cognizable on federal habeas review and cannot support authorization to file a successive application. *See In re Gentras*, 666 F.3d 910, 911 (5th Cir. 2012). Jones's remaining claims were or could have been raised in his prior § 2254 application; thus, his proposed § 2254 application is successive, and he must meet the requirements in 28 U.S.C. § 2244(b). *See Leal Garcia v. Quarterman*, 573 F.3d 214, 222 (5th Cir. 2009).

We may authorize the filing of a second or successive § 2254 application only if the applicant makes a prima facie showing that either: (1) his claims rely on a new rule of constitutional law that was made retroactive to cases on collateral review by the Supreme Court and was previously unavailable; or (2) the factual predicate for the claims could not have been discovered previously through the exercise of due diligence, and the underlying facts, if proven, would establish by clear and convincing evidence that, but for constitutional error, no reasonable trier of fact would have found the applicant guilty of the underlying offense. § 2244(b)(2), (b)(3)(C). Jones has not made the required showing. Further, to the extent Jones's proposed claims were presented in his prior § 2254 application, they may not be raised in a successive § 2254 application. *See* § 2244(b)(1). Finally, even if a showing of actual innocence were sufficient to overcome § 2244(b)'s bar to filing a successive habeas application, Jones has failed to demonstrate that, in light of new reliable evidence, it is more likely than not that no reasonable juror would have convicted him. *See McQuiggin v. Perkins*, 569 U.S. 383, 395-97 (2013); *Schlup v. Delo*, 513 U.S. 298, 324, 327 (1995).

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Accordingly, IT IS ORDERED that Jones's motion for authorization to file a successive § 2254 application is DENIED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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Suite 115
NEW ORLEANS, LA 70130

September 27, 2019

Mr. Arthur S. Johnston III
Southern District of Mississippi, Jackson
United States District Court
501 E. Court Street
Suite 2.500
Jackson, MS 39201

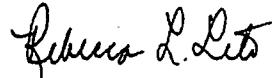
No. 19-60605 In re: Victor Jones
USDC No. 5:19-CV-66

Dear Mr. Johnston,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By:
Rebecca L. Leto, Deputy Clerk
504-310-7703

cc w/encl:

Mr. Victor Dewayne Jones

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